

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 IN RE: NATIONAL) MDL No. 2804
5 PRESCRIPTION OPIATE)
6 LITIGATION,) Case No.
7) 1:17-MD-2804
8)
9 THIS DOCUMENT RELATES TO) Hon. Dan A.
10 ALL CASES) Polster
11)
12
13
14
15 Videotaped Deposition of DAVID S.
16 EGILMAN, M.D., MPH, held at the Providence
17 Marriott Downtown, 1 Orms Street, Providence,
18 Rhode Island, commencing at 9:08 a.m., on the
19 above date, before Debra A. Dibble, Certified
20 Court Reporter, Registered Diplomate
21 Reporter, Certified Realtime Captioner,
22 Certified Realtime Reporter and Notary
23 Public.
24
25
26
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12	BARTLIT BECK LLP BY: BRIAN SWANSON, ESQUIRE brian.swanson@barlit-beck.com 54 West Hubbard Street Suite 300 Chicago, Illinois 60654 Counsel for Walgreens	14 15 Egilman 33 OTHER/OxyContin Tablets NDA 563 #20-553, PDD1501603661-1501603669	
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24		22 23 24	
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1	BARNES & THORNBURG, LLP BY: WILLIAM A. HAHN, II, ESQUIRE william.hahn@btlaw.com 11 South Meridian Street Indianapolis, Indiana 46204 (317) 231-7501 Counsel for H.D. Smith ALSO PRESENT: Jonathan Jaffe	1 Egilman 35 FDA and Opioids: What's a 607 Regulator to Do? Pain Care Forum. Douglas C. Throckmorton, MD PowerPoint. ENDO-Opioid_MDL-02791998	
8	APPEARING VIA VIDEO STREAM: Kevin Reardon kevin.j.reardon@gmail.com	2 Egilman 36 Opinion-Around 1997, 627 Venture members Ortho-McNeil (Johnson & Johnson) and Purdue began co-promoting Ultram SR, intended for the use of more moderate pain	
9		3 Egilman 37 Non-Malignant Pain 630 Consensus Guidelines PKY181320029- 181320030	
10		4 Egilman 38 Purdue Pharma, L.P., 630 Proposal 8-26-98 PKY183033731- 183033736	
11		5 Egilman 39 Exhibit B.77, David S. 633 Egilman Report Opiate Litigation	
12	Jay Licher jlicher@baronbudd.com	6 Egilman 40 Exhibit B.136, David S. 652 Egilman Report Opiate Litigation	
13	Charles Bachmann cbachmann@seegerweiss.com	7 Egilman 41 Opinion-ENDO was either too 654 cheap to add its opioid labels to the 2014 PDR or completely irresponsible for this failure to warn doctors of any data concerning these dangerous drugs	
14	Scott Siegel ssiegel@seegerweiss.com	8 Egilman 42 B1, B49, B50, B94, B310, 669 B398, and B454	
15	VIDEOGRAPHER: Bill Geigert	9 Egilman 43 B.6 Redweld 697	
16		10 Egilman 44 B.123 Redweld 697	
17		11 Egilman 45 Tab 22, Exhibit 385 697	
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1	PROCEEDINGS	
2	(April 26, 2019 at 9:08 a.m.)	
3	THE VIDEOGRAPHER: Good	
4	morning. We are back on the record.	
5	Today's date is April 26, 2019, and	
6	the time is 9:08 a.m.	
7	This is the continuation of the	
8	deposition of Dr. David Egilman.	
9	Counsel will be noted on the	
10	stenographic record.	
11	Sir, I want to remind you you	
12	are still under oath.	
13	Counsel, please proceed.	
14	DAVID S. EGILMAN, M.D., MPH,	
15	having been previously duly sworn, was	
16	examined and testified as follows:	
17	DIRECT EXAMINATION	
18	BY MR. BLANK:	
19	Q. Good morning, Dr. Egilman. I	
20	am Tim Blank with the law firm of Dechert.	
21	You recognize that you're still under oath.	
22	Yes?	
23	A. Yes.	
24	Q. Dr. Egilman, do you purport to	
		1 be an expert on compliance with suspicious
		2 order monitoring?
		3 A. By the definition of expert
		4 that I gave yesterday? Yes.
		5 Q. By any other definition?
		6 A. Give me another definition.
		7 Q. So by your definition, you
		8 purport to be an expert in suspicious order
		9 monitoring?
		10 A. By the definition that I gave
		11 yesterday, I'm an expert in suspicious order
		12 monitoring. I'm not an expert in all aspects
		13 of suspicious order monitoring, but I'm
		14 familiar with any aspects of suspicious order
		15 monitoring.
		16 Q. Are you familiar with any
		17 regulations that govern the obligations with
		18 respect to suspicious order monitoring?
		19 A. The Controlled Substances Act
		20 and --
		21 Q. Which section of the Controlled
		22 Substances Act?
		23 A. I don't recall. The Marino
		24 bill which modified the DEA's ability to
		enforce suspicious order monitoring
		violations.
		So I'm familiar with some of
		the enforcement actions with respect to
		suspicious order monitoring.
		Q. And in your expert report, you
		criticize the performance of various
		defendants, manufacturers, distributors,
		others, with respect to their compliance with
		suspicious monitoring obligations --
		suspicious order monitoring obligations; is
		that right?
		A. Yes.
		Q. What is the regulation that
		governs suspicious order monitoring?
		A. Do you mean under the
		Controlled Substances Act?
		Q. In the Code of federal
		regulations.
		A. I don't know the number.
		Q. And do you consider yourself a
		Drug Enforcement Agency expert?
		A. I know more than the layman
		about that. I know a lot about the DEA's

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<p>1 actions or inactions in the -- with respect 2 to the defendants in this case.</p> <p>3 Q. Do you have any experience with 4 respect to DEA law enforcement?</p> <p>5 THE WITNESS: Do you have 6 the -- my LiveNote.</p> <p>7 (Discussion off the record.)</p> <p>8 A. Do you mean personal 9 experience?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 Q. Do you know how the DEA applies 13 its regulations concerning suspicious order 14 monitoring?</p> <p>15 A. I'm familiar with examples 16 in -- that I've read in its relation to the 17 companies involved in this case.</p> <p>18 Q. Do you know what data inputs 19 the DEA looks at and considers in applying 20 the SOMs, suspicious order monitoring 21 regulations?</p> <p>22 A. Some of them. They use the 23 ARCos database to look at sales and 24 distribution. They also control the amount</p>	<p>1 calculations that the DEA performs to 2 determine whether an order is suspicious? 3 MS. CONROY: Objection. 4 THE WITNESS: Well, I think 5 they compare -- yes.</p> <p>6 (BY MR. BLANK) And what are 7 you aware of in that respect?</p> <p>8 A. Well, they compare orders over 9 time to different -- by different 10 distributors to different locations.</p> <p>11 Q. How do they do that?</p> <p>12 A. It's different. It's changed 13 over time.</p> <p>14 Q. How do they currently do it?</p> <p>15 A. That, I don't know.</p> <p>16 Q. When did it last change?</p> <p>17 A. That, I don't know.</p> <p>18 Q. How did they do it the last 19 time you knew how they did it?</p> <p>20 A. They set a base and they look 21 for overage over that base by some standard 22 increase over time.</p> <p>23 Q. And do you know what that 24 standard increase is?</p>
<p>1 of basic raw materials that can come into the 2 country. Control the amount of sales which 3 relates to eventually downstream, the number 4 of narcotics that can be suspiciously 5 ordered.</p> <p>6 The -- so yes. I can just say 7 yes.</p> <p>8 Q. How does the DEA assess the 9 data inputs to determine whether an order is 10 suspicious or not?</p> <p>11 A. I think that's changed over 12 time.</p> <p>13 Q. How do they do it?</p> <p>14 A. Well, they do it a variety of 15 ways. One way is they rely on reports from 16 companies about suspicious order monitoring. 17 Another is they can look at the database that 18 they have of orders over time and location.</p> <p>19 They also get reports from the 20 field from a variety of law enforcement 21 agencies, press reports, which then can 22 trigger investigations about suspicious order 23 monitoring.</p> <p>24 Q. Are you aware of any -- any</p>	<p>1 Page 472</p> <p>1 A. No. It's changed over time.</p> <p>2 Q. Are you familiar with the 3 algorithm that is used to detect suspicious 4 orders?</p> <p>5 A. No.</p> <p>6 MS. CONROY: Objection.</p> <p>7 (BY MR. BLANK) Do you know how 8 any of the defendants in this case implement 9 their suspicious order monitoring practices?</p> <p>10 A. Yes.</p> <p>11 Q. Have you spoken to any of the 12 defendants in this regard?</p> <p>13 A. No. I didn't know I was 14 allowed to. But I would be glad to.</p> <p>15 Q. Have you ever consulted for the 16 Drug Enforcement Agency?</p> <p>17 A. No.</p> <p>18 Q. Have you ever worked for any 19 entity in the capacity of reviewing standard 20 suspicious order monitoring --</p> <p>21 A. No.</p> <p>22 Q. -- practices?</p> <p>23 A. No. Sorry.</p> <p>24 Q. Have you ever assisted anybody</p>
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<p>1 in developing a suspicious order monitoring 2 system?</p> <p>3 A. No.</p> <p>4 Q. Have you ever assisted anybody 5 in interpreting regulations relating to SOMs?</p> <p>6 A. No.</p> <p>7 Q. What are the U.S. Code sections 8 that apply to SOMs?</p> <p>9 A. I do not know.</p> <p>10 Q. What are the specific 11 requirements with respect to manufacturers?</p> <p>12 A. Manufacturers are responsible 13 to report suspicious orders. There's no 14 specific delineation, as I understand it, for 15 how that's done.</p> <p>16 Q. Have you reviewed DEA guidance 17 on SOM policies?</p> <p>18 A. Yes.</p> <p>19 Q. When?</p> <p>20 A. Over the last several months.</p> <p>21 Q. Which ones?</p> <p>22 A. I don't recall.</p> <p>23 Q. Do you reference them in your 24 report?</p>	<p>1 on statements made by company officials in 2 e-mails and memos, and in some cases, 3 deposition testimony. And the compliance 4 enforcement actions of the DEA.</p> <p>5 Q. But just because you did that 6 doesn't make you an expert. I want to know 7 what makes you an expert.</p> <p>8 MS. CONROY: Objection.</p> <p>9 THE WITNESS: Okay. I'm 10 telling you that what I just said 11 makes me an expert by my definition of 12 an expert. Very few people, 13 independent of the companies, have 14 been able to review the e-mails, 15 communications, documents, and detail 16 related to the company's lack of 17 adequate enforcement of suspicious 18 order monitoring rules, regulations, 19 procedures. So that means I know more 20 about it than a layman. And that 21 means -- and I can explain it to a 22 layman.</p> <p>23 So by my definition of an 24 expert, which may be different than</p>
<p style="text-align: center;">Page 476</p> <p>1 A. I don't think so.</p> <p>2 Q. By being --</p> <p>3 A. Well, they are referenced in -- 4 In the report, as you know, I 5 summarize the -- and then I thought provided 6 to the Department of Justice, violations of 7 suspicious order monitoring rules by many of 8 the companies, and some of that information 9 was included in the DOJ decisions.</p> <p>10 Q. Yeah, I'm talking about DEA 11 guidance on SOM policies.</p> <p>12 A. Right.</p> <p>13 Q. Okay. And then tell me once 14 again, because I can't recall if you told me 15 already. What is the basis for your claim to 16 be an expert on whether any of these 17 defendants are complying with their SOM 18 obligations?</p> <p>19 A. I used the methodology 20 explained in my report to review the 21 documents, to look at that issue. And I 22 examined, for example, the violations of SOM 23 procedures, e-mails, other documents, and 24 made conclusions about SOM violations based</p>	<p style="text-align: center;">Page 478</p> <p>1 your definition of an expert, that is 2 my expertise.</p> <p>3 Q. (BY MR. BLANK) Did anybody 4 except the plaintiffs in this case ever ask 5 you for your expert opinion on SOM 6 compliance?</p> <p>7 MS. CONROY: Objection.</p> <p>8 THE WITNESS: No.</p> <p>9 Q. (BY MR. BLANK) Doctor Egilman, 10 did you do anything to prepare for your 11 deposition today?</p> <p>12 A. Yes.</p> <p>13 Q. And yesterday?</p> <p>14 A. Yes.</p> <p>15 Q. What did you do? Specifically 16 to prepare for the deposition.</p> <p>17 A. I reread the report. Took 18 notes. Made notes on them.</p> <p>19 I spent a couple days with the 20 plaintiff lawyers two days before the 21 deposition.</p> <p>22 Q. Which -- when did you meet with 23 the plaintiffs' lawyers?</p> <p>24 A. On Tuesday and Wednesday.</p>

	Page 479	Page 481
1 Q. Full days?		1 the country. And that they had sued
2 A. Five, six hours each day.		2 manufacturers and distributors for two
3 Q. Where?		3 claims, the nuisance claim and the RICO
4 A. Here.		4 claim. And that the suit was based on the
5 Q. Where exactly? In this hotel?		5 harms, the cost of the harms done to the
6 A. In this hotel.		6 plaintiffs in the case, costs of those harms.
7 Q. Who was present?		7 And that's basically it. Generally.
8 A. Different people different		8 Q. And who told you that?
9 days. Ed Wallace the first day. Jayne		9 A. Probably Ms. Conroy.
10 Conroy the second day. Ellyn Hurd both days.		10 Q. Pardon?
11 Erin Dickinson the first day. Dave Buchanan		11 A. Ms. Conroy.
12 the second day. Jonathan Jaffe.		12 Q. Anybody else?
13 Q. Were they all lawyers?		13 A. Not in November.
14 A. Mr. Jaffe is not a lawyer.		14 Q. Which -- have you read the
15 Q. So you met with five lawyers		15 complaint in the action in which you are
16 and Mr. Jaffe?		16 purporting to testify as an expert?
17 A. Yes.		17 A. Yes.
18 Q. Anybody else?		18 Q. Which complaint have you read?
19 A. That's all I can recall. There		19 A. Read the complaint in this
20 may have been other lawyers whose names have		20 case. I read the complaint in the
21 escaped.		21 Massachusetts case. I read the complaint in
22 Q. Were lawyers also on the phone		22 the New York case. I think I read some of
23 from time to time?		23 the complaint in the Oklahoma case.
24 A. Not that I know of.		24 Q. Did you read the entire
	Page 480	Page 482
1 Q. Were any of your staff or		1 complaint in this case?
2 student research assistants present?		2 A. Yes.
3 A. They were in and out for some		3 Q. Can you recall what it says in
4 part of the time, yes.		4 that complaint about MS Contin?
5 Q. They travel from your office to		5 A. No.
6 this hotel to meet?		6 Q. Do you recall if it says
7 A. Right. Well, not -- they		7 anything about MS Contin?
8 schlepped a lot of material here, so yes.		8 A. I think MS Contin was not
9 Q. Did you make any notes with --		9 mentioned in the complaint.
10 in connection with your preparation?		10 Q. And I believe yesterday you
11 A. Yes.		11 testified about many of the documents that
12 Q. Have you shared those with us?		12 you reviewed in preparing your expert report.
13 A. Yes.		13 Were you sent any documents specifically
14 Q. Are there any notes that you		14 relating to Cuyahoga or Summit counties?
15 have not shared with us from your		15 A. Yes.
16 preparation?		16 Q. Which ones?
17 A. I don't think so.		17 A. Well, I read the depositions
18 Q. When you were retained by the		18 through the Summit, Cuyahoga County people
19 plaintiffs in November of 2018, what were you		19 responsible for the health plans. And I read
20 told about the litigation?		20 the deposition of the Medicaid person for the
21 A. I don't recall specifically.		21 state of Ohio with respect to the
22 Q. How about generally?		22 formularies.
23 A. Generally? I was told of the		23 I gave you a Summit County --
24 lawsuits by cities and counties from around		24 or there was a Summit County PowerPoint.

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<p>1 There were documents in the database that I 2 had that weren't sent to me, but they were in 3 the database. One of those is a Summit 4 County PowerPoint that I mentioned yesterday. 5 So there were other Summit Cuyahoga County 6 documents. For example, there is an ROI 7 squared document that deals with Cleveland 8 Clinic and KOLs in Cuyahoga County.</p> <p>9 And I've got documents related 10 to physicians who've been accused of and 11 sometimes convicted of overprescribing. So I 12 had those documents.</p> <p>13 Q. Were -- those physicians were 14 from Summit or Cuyahoga counties?</p> <p>15 A. I think so.</p> <p>16 Q. Do you remember the names?</p> <p>17 A. No, but they're in the -- 18 they're in my report.</p> <p>19 Q. Did you --</p> <p>20 A. Can I just finish my answer?</p> <p>21 You asked me for all of the 22 documents that I reviewed.</p> <p>23 Q. Okay. You can -- I'm satisfied 24 with what you've said so far. I'd like to</p>	<p>1 A. Not in the last several years. 2 Q. Have you ever interviewed any 3 prescribers from Summit or Cuyahoga counties 4 in Ohio?</p> <p>5 A. I believe so. 6 Q. When?</p> <p>7 A. I can't recall the year, but I 8 attended a conference in Cleveland and there 9 were prescribers there and I spoke to them.</p> <p>10 Q. Did you -- yeah, do you recall 11 their names?</p> <p>12 A. No.</p> <p>13 Q. How long did you speak with 14 them for?</p> <p>15 A. I think it was a one-day 16 conference, so that day.</p> <p>17 Q. You spoke with them all day?</p> <p>18 A. Well, I was speaking to lots of 19 people from Cleveland at that time. They 20 were mostly physicians.</p> <p>21 Q. How many?</p> <p>22 A. I don't recall.</p> <p>23 Q. And did you -- did you discuss 24 opioid prescriptions with them?</p>
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<p>1 follow up on some of the things you've said. 2 A. That's great. So my answer is 3 incomplete.</p> <p>4 Q. Well, when was -- have you ever 5 been to Ohio?</p> <p>6 A. Yes.</p> <p>7 Q. When was the last time you 8 went?</p> <p>9 A. To Ohio? Probably 2005, 2006 10 time period.</p> <p>11 Q. Have you -- and during that 12 trip to Summit -- or Ohio, did you go to 13 Summit or Cuyahoga County?</p> <p>14 A. Not on that trip.</p> <p>15 Q. Since you've been retained in 16 this case, which was November of 2018, you 17 have not been to Ohio; correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Have you interviewed any 20 prescribers from Summit or Cuyahoga counties 21 in Ohio?</p> <p>22 A. Not since -- not in the last 23 several years.</p> <p>24 Q. Pardon?</p>	<p>1 A. I can't recall. 2 Q. Since you've been retained in 3 this case, have you discussed with any 4 prescriber from Cuyahoga or Summit County 5 whether they saw any marketing messages by 6 any defendants in this case that they say 7 were misleading?</p> <p>8 A. No.</p> <p>9 Q. Have you ever had such a 10 discussion with any such prescribers for 11 Summit or Cuyahoga counties?</p> <p>12 A. No.</p> <p>13 Q. So I take it, then, you've 14 never asked any of such prescribers from 15 Cuyahoga or Summit County whether they've 16 relied on any marketing messages by any of 17 the defendants in this case in making 18 prescriptions decisions; correct?</p> <p>19 A. No.</p> <p>20 Q. That's incorrect?</p> <p>21 A. Correct.</p> <p>22 Q. Have you ever asked or spoken 23 with any prescribers from Cuyahoga or Summit 24 counties whether they wrote any medically</p>

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<p>1 unnecessary opioid prescriptions for anyone 2 in either of those two counties based on 3 misleading marketing messages? 4 MS. CONROY: Objection. 5 THE WITNESS: Do you mean 6 personally asked? 7 Q. (BY MR. BLANK) Correct. 8 A. No. 9 Q. Have you interviewed any 10 patients who received opioid prescriptions in 11 Cuyahoga or Summit County? 12 A. No. 13 Q. When you were retained in this 14 case, did you receive any summaries of any 15 type from plaintiffs' counsel? 16 A. Aside from the complaints? No. 17 Q. Well, the complaint's not a 18 summary. I meant a summary where a -- the 19 plaintiffs' lawyers have summarized issues or 20 summarized deposition testimony or summarized 21 documents for you. 22 A. Not that I can recall. 23 Q. Did you receive any medical 24 literature from plaintiffs' counsel?</p>	<p>1 Q. What were you told about 2 Rosen's testimony? 3 A. I don't recall. 4 Q. What were you told about Sade's 5 testimony? 6 A. I don't recall. 7 Q. What were you told about 8 Kathe Sackler's testimony? 9 A. I don't recall. 10 Q. What were you told about 11 Richard Sackler's testimony? 12 A. I don't recall. 13 Q. Just to confirm, you were not 14 given any written summaries of any of the 15 testimonies? 16 A. I got full depositions. 17 Q. Full transcripts but not 18 summaries from counsel? 19 A. Right. 20 Q. Dr. Egilman, are you familiar 21 with 21 CFR -- that's the Code of Federal 22 Procedure, Section 1301.74? 23 A. Not by number. 24 Q. So you don't know what that is?</p>
<p style="text-align: center;">Page 488</p> <p>1 A. No. 2 Q. Have you received any summaries 3 of testimony from plaintiffs' counsel, 4 whether those summaries are verbal or 5 written? 6 A. We've discussed the testimony 7 given in the case, yes. 8 Q. What's the -- you discussed the 9 testimony you've given so far in this case? 10 A. Discussed the testimony? Have 11 I discussed the testimony that I gave 12 yesterday? 13 Q. No. Have you discussed with 14 plaintiffs' counsel the testimony given by 15 other witnesses in this case? 16 A. Yes. 17 Q. Which witnesses did you 18 discuss? 19 A. I think Rosen, Sade, 20 Kathe Sackler, Richard Sackler. 21 And some other testimony that I 22 think I cited in the report. 23 Q. What were you told -- 24 A. We probably discussed that.</p>	<p style="text-align: center;">Page 490</p> <p>1 A. Not by number. 2 Q. That number doesn't ring a bell 3 with you? 4 A. The number doesn't ring a bell 5 to me. 6 Q. Dr. Egilman, would you agree 7 that chronic pain is a serious medical 8 condition? 9 MS. CONROY: Objection. 10 THE WITNESS: Yes and no. 11 Q. (BY MR. BLANK) Would you agree 12 that chronic pain affects millions of people 13 in the United States? 14 A. Probably, but I'm not sure. 15 Q. Would you agree that chronic 16 pain affects people in Summit County, Ohio? 17 A. Yes. 18 Q. Would you agree that chronic 19 pain affects people in Cuyahoga County, Ohio? 20 A. Yes. 21 Q. Do you agree that there are 22 risks associated with untreated chronic pain? 23 A. From the underlying disease 24 that causes the pain, yes.</p>

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<p>1 Q. Do you agree that every patient 2 should be treated individually? 3 A. No. 4 Q. Do you agree that there is no 5 single treatment option that is appropriate 6 for every chronic pain patient? 7 A. Yes. 8 Q. Do you agree that it is 9 important for physicians to have a variety of 10 treatment options to choose from when 11 treating a medical condition? 12 A. I answered that one yesterday, 13 and let me accept the same answer. But I can 14 repeat -- 15 Q. I do recall you did answer that 16 yesterday. I don't need to hear it again. 17 Do you agree that all 18 treatments for chronic pain have risks? 19 A. No. 20 Q. Do you agree that's the role of 21 the prescribing physician, to weigh risks and 22 benefits of any pain medication when treating 23 an individual patient? 24 A. When they can.</p>	<p>1 best judgment that he or she has when 2 deciding whether to prescribe a medication 3 for pain; correct? 4 A. No. Same answer. 5 Q. Whatever the best judgment of 6 that physician is, shouldn't that physician 7 use that best judgment? 8 A. If you are an -- if you are an 9 opioid addict physician, right, I don't think 10 you should be using any judgment. I don't 11 think you should be prescribing or 12 practicing. Okay? 13 So best judgment, medium 14 judgment, low judgment doesn't matter. Some 15 physicians are not -- because of their 16 vocation, their personal problems, other 17 medical issues, other issues, should not be 18 using any judgment, should not be 19 prescribing. 20 Q. So for -- let's carve out those 21 physicians that you claim are incapable of 22 having appropriate judgment. And of the 23 physicians that do have judgment, do you 24 agree they should use their best judgment</p>
<p style="text-align: center;">Page 492</p> <p>1 Q. Do you agree that a physician 2 should use his or her best judgment when 3 deciding whether to prescribe a medication 4 for pain? 5 A. I'm not sure. It's too broad. 6 It includes all physicians. Physicians have 7 different judgments. 8 Q. Do you think some physicians 9 should not use their best judgment? 10 A. I think some physicians don't 11 have good judgment. I can't evaluate -- I 12 can't answer that question without, you know, 13 some physicians are addicted to opioids, for 14 example. When you're addicted to opioids, 15 you lose good judgment. 16 Q. Okay. 17 A. You may use the best judgment 18 that you have, but because you're addicted to 19 opioids, your best judgment may not be 20 adequate for treating the patient. So there 21 are -- it's a more complicated question than 22 just that answer would imply. 23 Q. Sir, would you -- understood. 24 But you agree that a physician should use the</p>	<p style="text-align: center;">Page 494</p> <p>1 when prescribing medicine for pain? 2 MS. CONROY: Objection. 3 THE WITNESS: I think it's too 4 vague a question for me, because I 5 don't know how to assess best judgment 6 for all physicians. 7 Q. (BY MR. BLANK) I'm not asking 8 you to. I'm just asking you whether you 9 agree that the physicians who have judgment 10 should use the best of that judgment when 11 prescribing pain medications for their 12 patients. 13 A. Sorry. 14 MS. CONROY: Objection. 15 THE WITNESS: It's a vague and 16 ambiguous question. 17 I have good judgment, but you 18 don't want me operating on your 19 coronary arteries. No matter what my 20 judgment is, I shouldn't be doing 21 that. 22 Q. (BY MR. BLANK) You said 23 yesterday that you prescribed opioids to one 24 of your patients; correct?</p>

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<p>1 A. In part.</p> <p>2 Q. You said yesterday, I believe, 3 that you prescribed opioids to one of your 4 patients who was an addict. Correct?</p> <p>5 A. That's what I believed at the 6 time, yes.</p> <p>7 Q. Okay. And were you using your 8 best judgment when you did that?</p> <p>9 A. Yes. I was trying to get him 10 off the opioids. I couldn't just stop them. 11 Put him in withdrawal.</p> <p>12 Q. Dr. Egilman, do you agree that 13 students in medical school learn that opioids 14 are addictive?</p> <p>15 A. When?</p> <p>16 Q. Ever. In medical school.</p> <p>17 MS. CONROY: Objection.</p> <p>18 THE WITNESS: Do you mean 19 medical school now? Or medical school 20 when I went to medical school? Or 21 medical school when someone else went 22 to medical school in 1960?</p> <p>23 Q. (BY MR. BLANK) Now.</p> <p>24 A. I don't think all of them do.</p>	<p>1 specialist in your view?</p> <p>2 A. I manage patients with pain all 3 the time.</p> <p>4 Q. Are you a specialist in that 5 field? "Yes" or "no"? Or I don't know? 6 Which of those?</p> <p>7 A. Do you want a "yes" or "no"?</p> <p>8 Yes, I manage patients with pain all the 9 time.</p> <p>10 Q. Okay. Listen to my question, 11 then. Are you a pain management specialist?</p> <p>12 A. Yes. I manage pain all the 13 time in my practice. When I was practicing.</p> <p>14 Q. Are you an addiction expert?</p> <p>15 A. Yes.</p> <p>16 Q. On what basis?</p> <p>17 A. I've taken -- I've learned 18 about addiction in my residency and training. 19 I've treated patients who were addicted. 20 I've developed programs to treat addiction. 21 I've treated a lot of patients with 22 addiction. I had to get them unaddicted. On 23 that basis. And I've studied addiction and 24 addiction issues relatively intensively since</p>
<p>1 I don't think it's a uniform part of the 2 curriculum, per se.</p> <p>3 Q. Did you?</p> <p>4 A. I had no lecture on opioid 5 addiction that I can recall in medical 6 school.</p> <p>7 Q. Did you learn it otherwise in 8 medical school?</p> <p>9 A. No. I think I learned it 10 otherwise, not in medical school.</p> <p>11 Q. So you did not --</p> <p>12 A. I did not in medical school.</p> <p>13 Q. So you did not learn in medical 14 school that opioids are addictive?</p> <p>15 A. No. I learned it was -- I knew 16 opioids were addictive before I went to 17 medical school. I didn't have a lecture on 18 opioid addiction in medical school that I can 19 recall.</p> <p>20 Q. Dr. Egilman, are you a pain 21 management specialist?</p> <p>22 A. I manage patients with pain. 23 That's what I've done my whole life.</p> <p>24 Q. Are you a pain management</p>	<p>1 the late 1990s.</p> <p>2 Q. Are you board certified?</p> <p>3 A. Yes.</p> <p>4 Q. In addiction?</p> <p>5 A. No.</p> <p>6 Q. Are you board certified in pain 7 management?</p> <p>8 A. No.</p> <p>9 Q. Are you a toxicologist?</p> <p>10 A. I practice toxicology. I 11 evaluate toxicology as a part of occupational 12 environmental medicine.</p> <p>13 Q. Are you board certified?</p> <p>14 A. In toxicology? I don't -- no, 15 I'm not.</p> <p>16 Q. What are you board certified 17 in?</p> <p>18 A. Internal and occupational 19 medicine. In preventive occupational 20 medicine, and I'm board eligible in 21 preventive medicine.</p> <p>22 Q. Are you a board-certified 23 epidemiologist?</p> <p>24 A. There is no board in</p>

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<p>1 epidemiology.</p> <p>2 Q. Do you consider yourself a</p> <p>3 regulatory expert?</p> <p>4 A. Yes.</p> <p>5 Q. On what basis?</p> <p>6 A. Well, I took two courses at the</p> <p>7 Harvard Law School on regulations of</p> <p>8 occupational environmental health. That was</p> <p>9 one course taught by Nick Ashford,</p> <p>10 A-S-H-F-O-R-D.</p> <p>11 And a second law school course</p> <p>12 taught by him on environmental law and</p> <p>13 regulation and all aspects of those.</p> <p>14 I teach about FDA regulation in</p> <p>15 my course. I've published about FDA</p> <p>16 regulation or lack thereof in published</p> <p>17 papers.</p> <p>18 I've testified in front of FDA</p> <p>19 regulatory bodies.</p> <p>20 Q. More than once?</p> <p>21 A. Can I finish my answer before</p> <p>22 you interrupt?</p> <p>23 You're a lawyer. You can cut</p> <p>24 me off anytime you like, so -- according to</p>	<p>1 that sound about right?</p> <p>2 A. Could be.</p> <p>3 Q. And I didn't see that you were</p> <p>4 asked any questions.</p> <p>5 A. Well, I was in Grenada teaching</p> <p>6 an occupational health course. I wasn't at</p> <p>7 the DFA meeting. I sent them the testimony,</p> <p>8 and it was played on a video, so.</p> <p>9 Q. It wasn't live?</p> <p>10 A. It was on the video. I was</p> <p>11 live in Grenada teaching at a medical school</p> <p>12 when the testimony went on.</p> <p>13 Q. Was your testimony live or was</p> <p>14 it recorded and then delivered to the FDA?</p> <p>15 A. I recorded it and submitted it</p> <p>16 and it was played at the FDA hearing.</p> <p>17 Q. Are you currently employed?</p> <p>18 A. Yes.</p> <p>19 Q. By whom?</p> <p>20 A. Never Again Consulting.</p> <p>21 Q. Anybody else?</p> <p>22 A. Well, I teach at Brown, so</p> <p>23 that's kind of -- that's an employment</p> <p>24 contract, I guess.</p>
<p>1 the judge's rule, but you can just say you've</p> <p>2 heard enough and I'll stop.</p> <p>3 Q. Are you close to finishing?</p> <p>4 A. I don't know. Probably not.</p> <p>5 Q. Okay. Did you testify -- then</p> <p>6 I'll -- you -- I'll take what you've said so</p> <p>7 far.</p> <p>8 A. Okay. Then let me just put on</p> <p>9 the record that the answer is incomplete.</p> <p>10 Q. How many times did you testify</p> <p>11 before the FDA?</p> <p>12 A. I think two or three times.</p> <p>13 Q. When was the last time?</p> <p>14 A. The last time was 2013.</p> <p>15 Q. How long did you testify for?</p> <p>16 A. It was testimony by video, so</p> <p>17 if I remember all the video and PowerPoints,</p> <p>18 five or ten minutes.</p> <p>19 Q. And you included the transcript</p> <p>20 in your report; correct?</p> <p>21 A. Yes. And the PowerPoint that</p> <p>22 went with it.</p> <p>23 Q. And it looked to me like your</p> <p>24 testimony lasted maybe ten minutes? Does</p>	<p>1 Q. Who owns Never Again</p> <p>2 Consulting?</p> <p>3 A. I do.</p> <p>4 Q. Anybody else own it?</p> <p>5 A. No.</p> <p>6 Q. Do you have W-2 employees?</p> <p>7 A. Do you mean do I issue W-2s to</p> <p>8 people who work for me?</p> <p>9 Q. Yeah.</p> <p>10 A. Yes.</p> <p>11 Q. How many?</p> <p>12 A. 10. 12.</p> <p>13 Q. And of any of the people that</p> <p>14 assisted you in the preparation of your</p> <p>15 report that you named yesterday, are those --</p> <p>16 any of those W-2 employees?</p> <p>17 A. Yeah. They get paid and we</p> <p>18 issue W-2s to them.</p> <p>19 Q. Okay. And how about the</p> <p>20 students who assisted you? You paid them;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Did you issue W-2s to them?</p> <p>24 A. We haven't -- it's not time to</p>

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<p>1 issue W-2s. They were working in January and 2 late December. I don't think -- maybe -- I 3 don't think they got paid in December, so it 4 would have been next year.</p> <p>5 Q. Next year do you expect to 6 issue W-2s to them?</p> <p>7 A. I don't know. I assume so.</p> <p>8 Q. Do they --</p> <p>9 A. If they make less than 6 or 10 \$700, we don't have to issue W-2s. But if 11 they make more than that, we do have to issue 12 W-2s. So it will depend how much money they 13 made.</p> <p>14 Q. Do you consider them to be your 15 employees?</p> <p>16 A. I consider them to be contract 17 workers who are working for they. I'm not 18 sure what the -- I direct what they do. I 19 think they would be considered part-time 20 employees while they're working for me, yes.</p> <p>21 Q. Yesterday you testified about 22 the hourly rates that you pay your employees 23 and these -- some of the students that work 24 for you. Is the amount that you pay them the</p>	<p>1 plaintiffs?</p> <p>2 A. Students don't get paid \$40 an 3 hour. Students get paid \$20 an hour. My 4 full-time employees get paid about \$40 an 5 hour sometimes.</p> <p>6 Q. Okay. But you mark up both; 7 correct?</p> <p>8 A. No. We haven't billed on the 9 students yet, so I don't think -- 10 We'll probably -- 11 I wouldn't call it a markup. 12 But do we charge exactly what they pay them 13 in a W-2? No because we pay benefits. I 14 give bonuses. When they -- we do a fixed 15 rate. So if they're working time and a half 16 or double time, then they're making 60, 70, 17 \$80 an hour, plus benefits, which is another 18 20 percent.</p> <p>19 Plus, for example, I take my 20 entire staff on vacations. That gets 21 covered. I pay bonuses to the staff. So all 22 in all, it's pretty much a wash. They're not 23 a major profit center for me.</p> <p>24 Q. What's your current title at</p>
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<p>1 same amount that you charge the plaintiffs?</p> <p>2 A. No, I charge the plaintiffs 3 much more than what I charge them because I 4 bill for my time.</p> <p>5 Q. No, but if you pay an employee 6 \$40 an hour, what do you bill the plaintiffs?</p> <p>7 A. I don't know. Something more 8 than that.</p> <p>9 Q. How much more?</p> <p>10 A. I don't know. 60 or \$70 an 11 hour, something like that.</p> <p>12 Q. So you have a 50 to 75 percent 13 markup on hourly rates?</p> <p>14 MS. CONROY: Objection.</p> <p>15 THE WITNESS: No.</p> <p>16 Q. (BY MR. BLANK) What's -- 17 So you do mark up the hourly 18 rates. That is, you charge the plaintiffs 19 more for every hour that the students work 20 that you pay them; correct?</p> <p>21 MS. CONROY: Objection.</p> <p>22 THE WITNESS: No.</p> <p>23 Q. (BY MR. BLANK) If you pay a 24 student \$40 an hour, what do you charge the</p>	<p>1 Brown?</p> <p>2 A. Clinical professor, department 3 of family medicine.</p> <p>4 Q. And I can't remember if you 5 testified to this. Do you get paid by Brown?</p> <p>6 A. I get a library card, which is 7 probably worth about \$50,000 to me. And when 8 I'm teaching a course in the school of public 9 health, they paid my parking.</p> <p>10 Q. Do you get tax on that \$50,000 11 library card?</p> <p>12 A. I do not.</p> <p>13 Q. Do you currently have any 14 practicing privileges at any hospitals?</p> <p>15 A. No.</p> <p>16 Q. Do you have admitting 17 privileges at any hospitals?</p> <p>18 A. No.</p> <p>19 Q. Are you currently seeing any 20 patients at any hospitals?</p> <p>21 A. No.</p> <p>22 Q. Are you currently seeing any 23 patients anywhere?</p> <p>24 A. Right. We went over that</p>

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<p>1 yesterday. Do you want me to repeat that 2 testimony?</p> <p>3 Q. No.</p> <p>4 What are the professional 5 organizations in which you are currently a 6 member?</p> <p>7 A. AMA, APHA, AHRP, a couple of 8 geological societies. I have to look at my 9 CV to remember them all.</p> <p>10 Q. But that's where they're 11 listed?</p> <p>12 A. They're there. I have my CV here someplace.</p> <p>13 Q. I have it too. It's okay. 14 We'll get to that.</p> <p>15 Do you consider yourself an 16 expert in marketing?</p> <p>17 A. Yes.</p> <p>18 Q. And do you consider yourself 19 specifically an expert in pharmaceutical 20 marketing?</p> <p>21 A. And device. Medical marketing.</p> <p>22 Q. Medical marketing. That's 23 pharmaceuticals and devices?</p>	<p>1 A. Well, I wrote two chapters in 2 the book "Handbook of Warnings and Risk 3 Communication." And then all the other 4 things that I just said, which I will be glad 5 to repeat. I've published in 6 peer-reviewed --</p> <p>7 Q. No need.</p> <p>8 A. Okay. My answer is incomplete. 9 Go ahead.</p> <p>10 Q. No, I said no need to repeat 11 it, because you've referenced it. You 12 referenced the two chapters. Anything else 13 besides what you've already testified about?</p> <p>14 A. I've given talks on warnings 15 and risk communication.</p> <p>16 Q. Do you consider yourself an 17 expert in the drug approval process?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know which government 20 agencies regulate drug approvals?</p> <p>21 A. Yes.</p> <p>22 Q. Which ones?</p> <p>23 A. FDA.</p> <p>24 Q. Any others?</p>
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<p>1 A. Correct.</p> <p>2 Q. And is that because you believe 3 you know more than the layperson in those 4 fields?</p> <p>5 A. That would be a beginning. 6 It's also because I've studied marketing 7 practices. I've published peer-reviewed 8 papers on marketing practices. I teach on 9 marketing practices. I give lectures on 10 marketing practice at APHA and other 11 universities. I've written book chapters on 12 marketing practices in I think two or three 13 books.</p> <p>14 So there's a lot of different 15 bases for why I think I'm an expert on 16 marketing practices of pharmaceutical 17 companies.</p> <p>18 Q. Do you consider yourself an 19 expert in pharmaceutical labeling?</p> <p>20 A. Yes.</p> <p>21 Q. Do you consider yourself an 22 expert in warnings on such labels?</p> <p>23 A. Yes.</p> <p>24 Q. On what basis?</p>	<p>1 A. Well, for some -- some -- 2 depends what you consider drug, but Consumer 3 Product Safety Commission might regulate some 4 over-the -- some cosmetics, which can be 5 advertised as having medical benefits. 6 Generally they'd regulate them to say you 7 can't say that, so they regulate that.</p> <p>8 Q. Are you familiar with the new 9 drug application process at the FDA?</p> <p>10 A. Yes.</p> <p>11 Q. We will refer to that as NDA. 12 Is that all right?</p> <p>13 A. Yes.</p> <p>14 Q. Have you ever worked on a new 15 drug application with the FDA?</p> <p>16 A. No.</p> <p>17 Q. Have you ever worked with the 18 FDA on any drug approval?</p> <p>19 A. No.</p> <p>20 Q. Have you ever reviewed a new 21 drug application?</p> <p>22 A. For the FDA?</p> <p>23 Q. Yes.</p> <p>24 A. No.</p>

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<p>1 Q. Have you ever been involved in 2 submitting an NDA? 3 A. No. 4 Q. Do you know what an NDA 5 submission entails? 6 A. Yes. 7 Q. What is required? 8 A. Well, NDA submissions are 9 hundreds of boxes of material. So you -- you 10 first of all, before the NDA process starts, 11 the company has to negotiate with the FDA the 12 kinds and quality and size of the studies 13 that are going to be done to get the drug 14 approved. And that's a negotiated process. 15 Then there's usually three 16 levels of -- three levels of studies that are 17 done. Some toxicity studies to start, then 18 level two studies, which would involve small 19 trials that might look for benefit, and then 20 the third level would be randomized 21 controlled trials, then you'd focus on 22 benefits.</p> <p>23 Generally the organization 24 standards would say that those studies have</p>	<p>1 MS. CONROY: Objection. 2 Q. (BY MR. BLANK) Can you answer 3 it "yes" or "no"? 4 A. No. 5 Q. So there are labeled -- drug 6 labels on drug packaging that have not been 7 approved by the FDA in the United States? 8 Prescription drugs? 9 A. There are prescription drugs 10 that when packaged and given to the patient 11 include information that's not been approved 12 by the FDA. 13 A lot of pharmaceutical 14 company -- a lot of pharmacies put their own 15 short version instructions on the label -- on 16 the packaging in the bag that the patient 17 gets. That's not, as far as I understand, 18 approved by the FDA. 19 Q. But the manufacturer's label is 20 approved by the FDA; correct? 21 A. That is correct. That wasn't 22 the question you asked. 23 Q. I just asked it. 24 A. That's correct. I'm just</p>
<p style="text-align: center;">Page 512</p> <p>1 to include at least 2 to 300 patients. The 2 FDA generally requires two RCTs that are -- 3 have a statistically significant result. And 4 what's not required is that the company 5 doesn't have to turn over all of the studies. 6 The company may do 30 studies. Of those 7 studies produce two that were positive and 8 just submit those two and not submit the 9 others.</p> <p>10 Q. I'm going to stop you here and 11 I'll note for the record that your answer is 12 not complete, because I want to move on to 13 the next question.</p> <p>14 Do you agree that the FDA has 15 to approve the label for every drug?</p> <p>16 A. The label is negotiated, and 17 the approval is agreed to by the company and 18 the FDA.</p> <p>19 Q. But if the FDA doesn't approve 20 the label, it does not go on the packaging; 21 correct?</p> <p>22 A. If the FDA doesn't finally -- 23 they generally -- the letter that -- 24 Q. It's a yes-or-no question.</p>	<p style="text-align: center;">Page 514</p> <p>1 saying it wasn't the question you asked 2 before. 3 Q. And you understand that the FDA 4 regulates prescription drug promotion in this 5 country? 6 A. Yes and no. 7 Q. Have you communicated with 8 anyone at the FDA about Purdue? 9 MS. CONROY: Objection. 10 THE WITNESS: Aside from the 11 FDA presentation I gave? No. 12 Q. (BY MR. BLANK) That was the 13 videotaped recording? 14 A. Right. 15 Q. Are you aware whether the FDA 16 has found that any manufacturer of any opioid 17 has committed fraud on the FDA with respect 18 to its labeling? 19 A. Do you mean a labeling that 20 goes in the package? 21 Q. Correct. 22 A. No. 23 Q. Have you ever done any work for 24 the Federal Trade Commission?</p>

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	<p>1 A. No.</p> <p>2 Q. Do you know what unbranded</p> <p>3 promotion is?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know whether the Federal</p> <p>6 Trade Commission regulates unbranded</p> <p>7 promotion?</p> <p>8 A. Do you mean of drugs?</p> <p>9 Q. Yes.</p> <p>10 A. Not that I can recall.</p> <p>11 Q. Have you ever worked for or</p> <p>12 consulted with the Federal Trade Commission?</p> <p>13 A. No.</p> <p>14 Q. Have you ever been employed by</p> <p>15 a pharmaceutical company?</p> <p>16 A. No.</p> <p>17 Q. Have you ever consulted for a</p> <p>18 pharmaceutical company?</p> <p>19 A. Kind of, sort of.</p> <p>20 Q. Who?</p> <p>21 A. Confidential.</p> <p>22 Q. You can tell me. We have a</p> <p>23 protective order.</p> <p>24 A. It doesn't matter. I don't</p>	<p>1 Q. Did you get paid?</p> <p>2 A. No.</p> <p>3 Q. Did you choose to end the</p> <p>4 consultancy?</p> <p>5 A. I would say that it wasn't a</p> <p>6 very formal consultancy, so.</p> <p>7 There was an issue. We</p> <p>8 discussed it. The issue was -- that was it.</p> <p>9 Q. Are you familiar with DDMAC?</p> <p>10 A. Yes.</p> <p>11 Q. What is or was DDMAC?</p> <p>12 A. The -- they're in charge of but</p> <p>13 do not regulate in an effective manner</p> <p>14 advertising of pharmaceuticals.</p> <p>15 Q. It's your opinion that they do</p> <p>16 not effectively regulate pharmaceutical</p> <p>17 advertising; is that right?</p> <p>18 MS. CONROY: Objection.</p> <p>19 THE WITNESS: That's certainly</p> <p>20 my opinion, yes.</p> <p>21 Q. (BY MR. BLANK) Did DDMAC</p> <p>22 change its name?</p> <p>23 A. Well, the FDA changed its names</p> <p>24 many times. I don't know all of the names of</p>
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	<p>1 want to disclose it.</p> <p>2 Q. Why not?</p> <p>3 A. Because it's confidential.</p> <p>4 Q. We have a protective order that</p> <p>5 governs this deposition.</p> <p>6 A. Thank you. Great. I don't</p> <p>7 want to disclose it.</p> <p>8 Q. What was the nature of the work</p> <p>9 that you did?</p> <p>10 A. I don't want to discuss that</p> <p>11 either.</p> <p>12 Q. Was it related to prescription</p> <p>13 drugs for pain?</p> <p>14 A. No.</p> <p>15 Q. Was it related to opioids at</p> <p>16 all?</p> <p>17 A. No.</p> <p>18 Q. When was it?</p> <p>19 A. Maybe five, six years ago.</p> <p>20 Q. How long did you consult for?</p> <p>21 A. Not long.</p> <p>22 Q. How long?</p> <p>23 A. I think two or three</p> <p>24 conversations.</p>	<p>1 that organization.</p> <p>2 Q. Okay. So do you know what the</p> <p>3 new name is?</p> <p>4 A. No.</p> <p>5 Q. Have you heard of the Office of</p> <p>6 Prescription Drug Promotion?</p> <p>7 A. Yes.</p> <p>8 Q. Have you ever worked for DDMAC</p> <p>9 or OPDP?</p> <p>10 A. No.</p> <p>11 Q. Have you ever spoken to anybody</p> <p>12 at DDMAC?</p> <p>13 A. Yes.</p> <p>14 Q. How many times?</p> <p>15 A. That was what I discussed</p> <p>16 yesterday during the deposition. I went to a</p> <p>17 meeting --</p> <p>18 Q. You don't need to repeat that.</p> <p>19 Anything besides what you discussed</p> <p>20 yesterday?</p> <p>21 A. I think that's it.</p> <p>22 Q. Have you reviewed any of</p> <p>23 Purdue's submissions to the FDA regarding</p> <p>24 pharmaceutical promotion?</p>

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	<p>1 A. Yes.</p> <p>2 Q. Which ones?</p> <p>3 A. I can't recall specifically.</p> <p>4 Q. Have you ever --</p> <p>5 A. Certainly the approval label,</p> <p>6 and a variety of -- I mean, I have it in my</p> <p>7 report.</p> <p>8 Q. Have you --</p> <p>9 A. I have it in the report, the</p> <p>10 FDA letter sanctioning Purdue's marketing, so</p> <p>11 those examples. I've certainly reviewed</p> <p>12 those.</p> <p>13 Q. I was asking about Purdue's</p> <p>14 submissions.</p> <p>15 A. Well, those were submitted, I</p> <p>16 think. And then later on, the FDA read them</p> <p>17 and found them to be in violation of their</p> <p>18 rules and regulations.</p> <p>19 Q. Have you reviewed any other</p> <p>20 manufacturer's submissions to the FDA</p> <p>21 regarding pharmaceutical promotion?</p> <p>22 A. Yes.</p> <p>23 Q. Which defendants?</p> <p>24 I'm sorry, which manufacturing</p>	<p>1 You interrupted my answer.</p> <p>2 Do you want me to stop the</p> <p>3 answer?</p> <p>4 Q. No.</p> <p>5 A. Okay. You just wanted to</p> <p>6 interrupt the answer? No problem.</p> <p>7 Sometimes I can't tell whether</p> <p>8 you just want to interrupt or whether you</p> <p>9 want to stop.</p> <p>10 Q. I'll ask you to stop there and</p> <p>11 your answer is incomplete because you're</p> <p>12 taking way too long, and we don't have much</p> <p>13 time for your 489 opinions in this case.</p> <p>14 MS. CONROY: Objection. It was</p> <p>15 a four-second stop.</p> <p>16 Q. (BY MR. BLANK) Can you</p> <p>17 describe the --</p> <p>18 A. Was that a question?</p> <p>19 Did you just ask me a question?</p> <p>20 Q. I'm about to.</p> <p>21 A. Oh, okay. You were just making</p> <p>22 a gratuitous comment? Go right ahead.</p> <p>23 Q. Can you just -- are you</p> <p>24 familiar with the DDMAC review process of</p>
	<p>1 defendants?</p> <p>2 A. I think I've seen them for</p> <p>3 Endo, Insys, probably several others.</p> <p>4 Q. Have you done any research into</p> <p>5 how DDMAC or OPDP reviews promotional</p> <p>6 materials?</p> <p>7 A. Yes.</p> <p>8 Q. And what did your research</p> <p>9 show?</p> <p>10 A. That they don't review them.</p> <p>11 They -- the advertising promotion materials</p> <p>12 get sent to DDMAC, and DDMAC, you know,</p> <p>13 doesn't send them -- and we read this and</p> <p>14 then we okay it. They just filed it. And</p> <p>15 then they occasionally review.</p> <p>16 But as they see things, for</p> <p>17 example, at that meeting I had that some of</p> <p>18 the DDMAC people commented in effect they</p> <p>19 were just watching TV, and they saw some ads</p> <p>20 that they thought were wrong and that</p> <p>21 triggered an investigation.</p> <p>22 Q. Who was that?</p> <p>23 A. I don't remember the name of</p> <p>24 the people, but I'm not done with my answer.</p>	<p>1 promotional materials?</p> <p>2 A. Yes.</p> <p>3 Q. Do you believe that they review</p> <p>4 the promotional materials?</p> <p>5 A. No. Generally not, maybe</p> <p>6 occasionally. They may take maybe a small</p> <p>7 sample, but they don't look at all the ones</p> <p>8 that get submitted.</p> <p>9 Q. Do you believe that they're</p> <p>10 supposed to review the promotional materials?</p> <p>11 MS. CONROY: Objection.</p> <p>12 THE WITNESS: I don't think so.</p> <p>13 I think they're -- they're authorized</p> <p>14 to review them, but there's no</p> <p>15 requirement in the law that they read</p> <p>16 them all.</p> <p>17 Q. (BY MR. BLANK) So do you know</p> <p>18 for sure whether they're responsible for</p> <p>19 reviewing promotional materials?</p> <p>20 A. Sure, they're responsible for</p> <p>21 reviewing them, but that's different from</p> <p>22 saying that they review them all.</p> <p>23 Q. Understood.</p> <p>24 Have you ever reported any</p>

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1 OxyContin promotional activities to the FDA 2 through the FDA Bad Ad Program? 3 A. No. 4 Q. Have you reported any other 5 opioid promotional activities to the FDA 6 through the FDA's Bad Ad Program? 7 A. No. 8 Q. Have you reviewed FDA guidance 9 on pharmaceutical promotion? 10 A. Yes. 11 Q. Which guidance? 12 A. Do you mean by document number? 13 Q. Yeah. 14 A. I don't recall. 15 Q. How about document type? 16 A. I'm not sure what you mean by that. 17 Q. When did you last review such guidance? 18 A. I don't know. Probably in the last several months. 19 Q. Have you reviewed any FDA guidance on unbranded promotional materials? 20 A. Yes.	1 A. I don't recall. 2 Q. You don't -- 3 A. I don't recall the number or the name. 4 Q. Are you familiar with the regulations governing non-branded materials? 5 A. Same thing. I've read them. 6 Q. Can't -- 7 A. I don't know the -- I don't know the name or the number. 8 Q. Are you familiar with how the FDA enforces those regulations? 9 A. Yes. 10 Q. How do they do it? 11 A. They generally don't do it. 12 Q. Pardon? 13 A. They generally don't do it. 14 Why don't we take a quick break. 15 MR. BLANK: Okay. 16 THE VIDEOGRAPHER: Going off the record at 10:21 a.m. 17 (Recess taken, 10:22 a.m. to 10:41 a.m.)
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1 Q. Which ones? 2 A. I don't recall. That was longer ago. 3 Q. Prior to your engagement in this case? 4 A. Oh, yeah. 5 Q. What regulations apply to promotion of prescription drugs? 6 A. Do you mean by Code of Federal Regulations numbers? 7 Q. Correct. 8 A. I don't know. 9 Q. How about by name? 10 A. By name? 11 Q. Yeah. 12 A. I don't know what the current name is of those regulations. 13 Q. Are you familiar with the regulations that govern the distribution of branded materials? 14 A. I've read them in the past, yes. 15 Q. Okay. Yeah. Which -- which regulations?	1 THE VIDEOGRAPHER: We are back on the record at 10:42. 2 Q. (BY MR. BLANK) Thank you. 3 Dr. Egilman, I want to go back to an area we 4 touched on earlier today, because one of the 5 questions I asked I got -- I may have been -- 6 misunderstood your answer or you may have 7 misunderstood my question, so I want to ask 8 it again. 9 And it relates to the questions 10 that I asked you about whether you had had 11 any conversations with any prescribers in 12 Cuyahoga or Summit County, Ohio. 13 And the question that I would 14 like to ask you is whether you have ever 15 spoken with any prescribers -- strike that. 16 Whether you ever asked any 17 prescribers in Cuyahoga or Summit counties 18 whether they wrote any medically 19 unnecessary -- strike that. 20 Have you asked any prescribers 21 from Cuyahoga or Summit County, whether 22 they've relied on any marketing messages by 23 any of the defendants in this case in making

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<p>1 prescription decisions?</p> <p>2 A. No.</p> <p>3 Q. Now, I looked at your CV, and</p> <p>4 you did not go to law school; is that</p> <p>5 correct?</p> <p>6 A. I did not apply to law school.</p> <p>7 I went -- I took two law school courses.</p> <p>8 Q. Do you consider yourself a</p> <p>9 legal expert?</p> <p>10 A. Certain areas of the law, yes.</p> <p>11 Q. Do you consider yourself a</p> <p>12 legal expert in spoliation?</p> <p>13 A. I know what it is.</p> <p>14 Q. Do you know what the legal</p> <p>15 elements of spoliation are?</p> <p>16 A. It's different in different</p> <p>17 states.</p> <p>18 Q. What is it in Ohio?</p> <p>19 A. That, I don't know.</p> <p>20 Q. What is it in Massachusetts?</p> <p>21 A. I do not know.</p> <p>22 Q. What is it in Rhode Island?</p> <p>23 A. I do not know.</p> <p>24 Q. Do you know what it is in any</p>	<p>1 A. No.</p> <p>2 Q. In your report, Dr. Egilman,</p> <p>3 you accuse Purdue of destroying documents;</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. And I noticed several opinions</p> <p>7 in exhibits. Do you have access to those</p> <p>8 exhibits?</p> <p>9 A. Yes.</p> <p>10 Q. Can I ask -- I don't have all</p> <p>11 of the copies, but I know you have access.</p> <p>12 MR. BLANK: Can we pull</p> <p>13 Exhibits 88, 162, 278, and 466 and</p> <p>14 hand them to Dr. Egilman, please?</p> <p>15 Q. (BY MR. BLANK) While they're</p> <p>16 doing that, Dr. Egilman, have you done any</p> <p>17 forensic analysis to determine whether Purdue</p> <p>18 has done any spoliation of evidence?</p> <p>19 MS. CONROY: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 Q. (BY MR. BLANK) Have you done</p> <p>22 any forensic analysis to determine whether</p> <p>23 any defendant has spoliated evidence?</p> <p>24 A. No.</p>
<p>1 state?</p> <p>2 A. California.</p> <p>3 Q. The legal elements of</p> <p>4 spoliation?</p> <p>5 A. I think so.</p> <p>6 Q. What are they?</p> <p>7 A. That's destroying documents</p> <p>8 that should be preserved after you're on</p> <p>9 notice that there may be a legal action.</p> <p>10 Q. So the notice is an important</p> <p>11 part of any claim of spoliation?</p> <p>12 A. Well, in California, in some</p> <p>13 places if you reasonably anticipate</p> <p>14 litigation, whether or not there's been</p> <p>15 specific notice or not, if you destroy</p> <p>16 documents in anticipation of litigation, you</p> <p>17 wouldn't need specific notice.</p> <p>18 But, for example, a lawsuit</p> <p>19 would be specific notice.</p> <p>20 Q. And do you know whether you're</p> <p>21 being offered as a legal expert in this case?</p> <p>22 A. No.</p> <p>23 Q. To your knowledge, are you</p> <p>24 being offered as a legal expert in this case?</p>	<p>1 Q. Thank you very much.</p> <p>2 Dr. Egilman, your assistant --</p> <p>3 somebody -- has handed you some of the</p> <p>4 exhibits I identified. The first one I'd</p> <p>5 like you to look at is Exhibit B88.</p> <p>6 A. I have it.</p> <p>7 Q. Which is one of your opinions</p> <p>8 titled "Purdue destroyed informational</p> <p>9 materials." And it consists of two pages.</p> <p>10 The first page is titled</p> <p>11 "OxyContin granted promotional materials,"</p> <p>12 and then it lists a whole bunch of materials.</p> <p>13 And then the second page is an</p> <p>14 e-mail or a memorandum to the entire sales</p> <p>15 force from somebody named Jim Lang. And</p> <p>16 you've underlined some language in that</p> <p>17 memorandum; correct?</p> <p>18 A. No.</p> <p>19 Q. What was wrong about what I</p> <p>20 said?</p> <p>21 A. I didn't underline anything.</p> <p>22 Q. Oh.</p> <p>23 A. That's how the document</p> <p>24 appears.</p>
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<p>1 Q. Thank you.</p> <p>2 But the underlined language, is</p> <p>3 that the basis for your opinion in B88 that</p> <p>4 Purdue destroyed informational materials?</p> <p>5 A. Well, the two documents</p> <p>6 together.</p> <p>7 Q. Do you think there's something</p> <p>8 wrong about asking sales force to destroy</p> <p>9 promotional materials that are outdated?</p> <p>10 A. If they're not retained, yes,</p> <p>11 for medical/legal reasons, where you can sue,</p> <p>12 yes. Or anticipated litigation.</p> <p>13 Q. Do you believe that -- is there</p> <p>14 any evidence that you are aware of that</p> <p>15 promotional materials for OxyContin were</p> <p>16 destroyed?</p> <p>17 Apart from this memorandum.</p> <p>18 A. Well, I think I did some</p> <p>19 searches for these documents on the first</p> <p>20 page and couldn't find them in the</p> <p>21 production.</p> <p>22 Q. Do you think it's appropriate</p> <p>23 practice when promotional materials become</p> <p>24 outdated that they should be destroyed?</p>	<p>1 Q. And it appears that Steve has</p> <p>2 asked -- sorry, Russ has asked Steve to help</p> <p>3 him locate some information and Steve</p> <p>4 replies, in this e-mail, which is Exhibit</p> <p>5 B162, with the information in the first</p> <p>6 paragraph. And then he says in the second</p> <p>7 paragraph, "I burned all files on my way out</p> <p>8 the door a la my predecessor. No. Should be</p> <p>9 with the files I left."</p> <p>10 "White pocket folder with</p> <p>11 brochures, et cetera.</p> <p>12 "If Sherl can't locate it, I</p> <p>13 gave Peter Justison a copy."</p> <p>14 Do you see that?</p> <p>15 A. Mm-hmm. (Witness nods.)</p> <p>16 Q. Okay. And do you think that</p> <p>17 the author of this e-mail was serious when he</p> <p>18 said that he burned all of his files on his</p> <p>19 way out the door?</p> <p>20 A. Do you mean is that what he</p> <p>21 did? Burn them?</p> <p>22 Q. Do you think he was serious</p> <p>23 when he said that?</p> <p>24 A. Yes. I don't think he burned</p>
<p style="text-align: center;">Page 532</p> <p>1 A. No. That's not how I would do</p> <p>2 it. Not how I think it should be done.</p> <p>3 Q. Do you think there was a</p> <p>4 sinister intent in destroying outdated</p> <p>5 promotional materials in August of 2000?</p> <p>6 A. I have no basis one way or the</p> <p>7 other to comment on that.</p> <p>8 Q. Would you take a look at</p> <p>9 Exhibit 162?</p> <p>10 A. Did you want to mark this or</p> <p>11 not?</p> <p>12 Q. No.</p> <p>13 A. Okay.</p> <p>14 Q. Exhibit 162 is from your</p> <p>15 report, is an opinion titled "Purdue</p> <p>16 destroyed documents." And it's a one-page</p> <p>17 e-mail from a gentleman named Stephen Seid to</p> <p>18 Russell Gasdia. And there's a red box around</p> <p>19 one of the sentences.</p> <p>20 Do you see that?</p> <p>21 A. That's my box.</p> <p>22 Q. You put the red box there?</p> <p>23 Correct?</p> <p>24 A. Correct.</p>	<p style="text-align: center;">Page 534</p> <p>1 them. And I wasn't referring to him in the</p> <p>2 opinion. I was referring to "a la my</p> <p>3 predecessor."</p> <p>4 Q. Who was the predecessor?</p> <p>5 A. I don't know.</p> <p>6 Q. What documents was he talking</p> <p>7 about?</p> <p>8 A. I don't know.</p> <p>9 He said all that, all files.</p> <p>10 He says his predecessor destroyed all the</p> <p>11 files.</p> <p>12 Q. Can you turn to Exhibit 278.</p> <p>13 A. Okay.</p> <p>14 Q. This is your opinion 278?</p> <p>15 A. Right.</p> <p>16 Q. Titled -- well, it doesn't say</p> <p>17 "Opinion" on the top of my page. Does it say</p> <p>18 "Opinion" on the top of your page?</p> <p>19 A. No.</p> <p>20 Q. Is this an opinion of yours?</p> <p>21 A. Yes.</p> <p>22 Q. So it's an opinion, not a fact?</p> <p>23 A. I think it's both.</p> <p>24 Q. Okay. But it is your opinion?</p>

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1 A. Yes.		1 destroy e-mails and documents.
2 Q. There was Purdue spoliation?		2 Q. And do you believe there was
3 A. Yes.		3 sinister intent in deleting e-mails?
4 Q. And this is an e-mail with some		4 A. Well, this patent is in 2007.
5 red arrows on it; correct?		5 In 2007, this company had already pled guilty
6 A. Correct.		6 to several crimes and been investigated and
7 Q. Are those your red arrows?		7 been sued in civil litigation. So I think
8 A. Yes.		8 there is an obligation for a company to
9 Q. And what are you pointing to?		9 preserve e-mails after they've been sued and
10 A. Subject line, "Billing drug		10 after they've pled guilty to crimes.
11 substance without training and		11 Q. Well, you --
12 authorization."		12 A. And so I would say that
13 Next sentence: "Although you		13 planning a system to destroy documents would
14 appear to be right, I don't know how many		14 not be good intent in that context.
15 times I have to tell you what is and is not		15 Q. Have you ever destroyed a
16 appropriate material for e-mail. Can't you		16 document?
17 talk to people? No more e-mails on this		17 A. Sure.
18 topic. And delete the ones you have right		18 Q. Have you ever deleted an
19 now. Phil."		19 e-mail?
20 Q. And do you know whether the		20 A. Sure.
21 recipient of this -- the recipients of this		21 Q. Have you broken the law by
22 e-mail actually deleted e-mails?		22 doing so?
23 A. I looked for e-mails related to		23 A. No.
24 this, and I couldn't find any.		24 Q. I want to go back to your --
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1 Q. And do you know what the		1 some of the questions we asked about your
2 e-mails were pertaining to?		2 experience in pain management.
3 A. The manufacturing process.		3 Have you ever assessed a
4 Q. And have you done any analysis		4 patient for pain?
5 of any of the hard drives of any Purdue		5 A. Yes.
6 employees to determine whether documents were		6 Q. When was the last time?
7 permanently deleted?		7 A. This week.
8 A. No. I asked the plaintiffs to		8 Q. Who?
9 get those hard drives, historically, since		9 Never mind. Were they a -- I
10 1995, and they didn't get them.		10 don't want to know their name.
11 Q. And is there any other		11 A. That's good. I'm not going to
12 information produced in this litigation that		12 give you that name.
13 would lead you to conclude that documents		13 Q. And how did you assess the
14 were destroyed?		14 pain?
15 A. Yes.		15 A. I discussed it with them.
16 Q. What?		16 Q. Are you familiar with the pain
17 A. Well, I'm not sure if it was		17 scale?
18 produced in the litigation, but you see under		18 A. Yes.
19 278, you have the self-destructing document		19 There are various pain scales,
20 e-mail messaging system patented by		20 but yes.
21 Purdue Pharma employees.		21 Q. Well, the 1 to 10?
22 Q. Do you think that --		22 A. Yes. There's also 1 to 4. The
23 A. It seems like that would be a		23 Roth study was a 1 to 4.
24 system that would be set up to routinely		24 Q. Have you treated patients with

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<p>1 cancer-related pain?</p> <p>2 A. Yes.</p> <p>3 Q. When was the last time?</p> <p>4 A. Sometime in the probably 2000,</p> <p>5 2001 period.</p> <p>6 Q. So roughly 18, 19 years ago?</p> <p>7 A. Right. I probably supervised</p> <p>8 patients who were treated for cancer pain</p> <p>9 when I was in family medicine as well.</p> <p>10 Q. Have you --</p> <p>11 A. That would have been in the</p> <p>12 last ten years -- last five to ten years.</p> <p>13 Q. Have you treated patients with</p> <p>14 chronic non-cancer pain?</p> <p>15 A. Yes.</p> <p>16 Q. Do you currently?</p> <p>17 A. No.</p> <p>18 Q. When was the last time?</p> <p>19 A. Probably regularly when I was</p> <p>20 at the clinic, 2001, 2002.</p> <p>21 Q. So around 18 or 19 years ago?</p> <p>22 A. Yes.</p> <p>23 I supervised patients --</p> <p>24 supervised patient care when I was in family</p>	<p>1 treated such a patient?</p> <p>2 A. 2001.</p> <p>3 Aside from supervising some</p> <p>4 similar patients in family medicine.</p> <p>5 That's supervising the care of,</p> <p>6 by supervising residents who were taking care</p> <p>7 of similar patients.</p> <p>8 Q. Earlier I think you testified</p> <p>9 you had a patient who was addicted to</p> <p>10 OxyContin; correct?</p> <p>11 A. Correct.</p> <p>12 Q. Is this the -- was there only</p> <p>13 one? Or was there more than one?</p> <p>14 A. I can only recall one, but</p> <p>15 there may have been more. They were -- it</p> <p>16 looks like from the IMS data, there may have</p> <p>17 been two, but I can only recall one.</p> <p>18 Q. And was that patient that you</p> <p>19 can recall, was he or she taking OxyContin as</p> <p>20 prescribed?</p> <p>21 A. I don't know. I suspected not.</p> <p>22 Q. Do you have any records</p> <p>23 relating to that patient?</p> <p>24 A. All the ones I have are the</p>
<p style="text-align: center;">Page 540</p> <p>1 medicine with chronic non-malignant pain</p> <p>2 treatments. But that would have been in the</p> <p>3 last three years.</p> <p>4 Q. Have you treated patients for</p> <p>5 any sort of addiction?</p> <p>6 A. Yes.</p> <p>7 Q. How many?</p> <p>8 A. Hundreds. Probably thousands.</p> <p>9 Certainly hundreds.</p> <p>10 Q. Were any of those patients</p> <p>11 addicted to opioids?</p> <p>12 A. Some.</p> <p>13 Q. How many?</p> <p>14 A. Not many. Probably less than a</p> <p>15 dozen.</p> <p>16 Q. Sorry, less than a dozen?</p> <p>17 A. Probably.</p> <p>18 Q. And were those -- were those</p> <p>19 dozen patients or so addicted to prescription</p> <p>20 opioids?</p> <p>21 A. Yes.</p> <p>22 Q. All of them?</p> <p>23 A. Yes.</p> <p>24 Q. When was the last time you've</p>	<p>1 ones Purdue gave me.</p> <p>2 Q. On the patient record?</p> <p>3 A. On the IMS data that Purdue</p> <p>4 illegally used in my deposition.</p> <p>5 Q. And you don't have any</p> <p>6 professional records of treating that</p> <p>7 patient?</p> <p>8 A. Correct.</p> <p>9 Q. Destroyed?</p> <p>10 A. I don't know. I don't work at</p> <p>11 the -- I sold the clinic 2002, and I don't</p> <p>12 know what happened to the records.</p> <p>13 The records were part of the</p> <p>14 sale.</p> <p>15 Q. What is iatrogenic addiction?</p> <p>16 A. Caused by medical care.</p> <p>17 Q. What is the risk of iatrogenic</p> <p>18 addiction resulting from prescription opioid</p> <p>19 use?</p> <p>20 A. There's no single answer to</p> <p>21 that question.</p> <p>22 Q. Can you quantify it?</p> <p>23 A. Well, it's not quantifiable as</p> <p>24 asked. There are a variety of situations and</p>

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<p>1 settings where doctors prescribing drugs can 2 result in addiction. 3 I can quantify it in different 4 settings. There's not good data for most -- 5 there's no long -- there's no epidemiologic 6 studies that are of reasonable quality that 7 look at that question under any settings, but 8 there's a variety of reports -- mostly case 9 reports, sometimes clinical series -- that 10 look at that issue in various populations.</p> <p>11 Q. Do you currently prescribe 12 opioids to any patients?</p> <p>13 A. No.</p> <p>14 Q. Have you ever prescribed 15 OxyContin?</p> <p>16 A. Yes. In your IMS data that you 17 provided.</p> <p>18 Q. And when was the last time?</p> <p>19 A. Probably in that IMS data.</p> <p>20 Q. From 2001?</p> <p>21 A. Correct.</p> <p>22 Q. Not since?</p> <p>23 A. Not since.</p> <p>24 And the 2002 data is not mine,</p>	<p>1 an opinion I have offered in this case. 2 Q. And you testified earlier that 3 these are opinions that you gave in prior 4 cases; right?</p> <p>5 MS. CONROY: Objection.</p> <p>6 THE WITNESS: Do you mean the 7 following pages? Yes.</p> <p>8 Q. (BY MS. NEWMARK) Yes.</p> <p>9 A. That go with No. 6? Yes.</p> <p>10 Q. Would that be pages 53 to 61?</p> <p>11 A. Right.</p> <p>12 There's more too, but that's 13 what I put in here.</p> <p>14 Q. What do you mean "There's 15 more"?</p> <p>16 A. Well, I gave deposition 17 testimony. There were other reports. I 18 retyped this section of one of the early 19 reports and put it in as this opinion, 20 because there were other things that I told 21 Purdue during that case -- during the three 22 cases I consulted on with respect to their 23 marketing practices with respect to 24 OxyContin.</p>
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<p>1 just to be clear.</p> <p>2 MR. BLANK: Dr. Egilman, my 3 colleague Jenna Newmark is going to 4 ask you some questions about your 5 specific opinions.</p> <p>6 EXAMINATION</p> <p>7 BY MS. NEWMARK:</p> <p>8 Q. Hi, Dr. Egilman. I'm 9 Jenna Newmark from Dechert. I am Tim's 10 colleague on behalf of Purdue. I'm going to 11 ask you some questions about -- specifically 12 let's start with your report.</p> <p>13 Can you please turn to page 53 14 of what's been marked as Exhibit 1F?</p> <p>15 A. Okay.</p> <p>16 Q. Okay. And it says at the top 17 there, "In 2004, I warned about the crisis; I 18 was ignored."</p> <p>19 Did I read that correctly?</p> <p>20 A. You did.</p> <p>21 Q. Is that one of your opinions 22 that you intend to offer in this case?</p> <p>23 A. Yes.</p> <p>24 Well, it's -- excuse me. It's</p>	<p>1 Q. So what's on pages 53 to 61 2 were in prior words that you submitted in 3 prior cases involving Purdue; right?</p> <p>4 A. Correct.</p> <p>5 Q. Did those include the Taylor 6 and the Freund cases?</p> <p>7 A. I can't remember the case 8 names.</p> <p>9 Q. Okay. But they're from 2004; 10 right?</p> <p>11 A. I think so.</p> <p>12 Q. And these are all opinions that 13 you formed in or before 2004?</p> <p>14 A. Yes.</p> <p>15 Q. And these are the exact 16 opinions that you rendered in 2000 -- in or 17 around 2004?</p> <p>18 MS. CONROY: Objection.</p> <p>19 THE WITNESS: This is some of 20 the retyped version of the opinions 21 that I'd offered in 2004.</p> <p>22 I mean, this document actually 23 is -- was produced by Purdue in the 24 production. In addition to this, I</p>

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<p>1 have PowerPoints that were produced in 2 production. My deposition, Purdue 3 produced in production. So all these 4 documents, and there are other reports 5 from other cases that Purdue produced 6 in production so they have them.</p> <p>7 Q. (BY MS. NEWMARK) What 8 materials did you rely upon for the opinions 9 that appear on pages 53 to 61?</p> <p>10 A. I think they're all -- all the 11 cites are in.</p> <p>12 Q. So is it only what's in the 13 footnotes?</p> <p>14 A. No, it's probably more. I 15 reviewed many, many more things. But I think 16 I have a cite here for more or less every 17 sentence. There may have been other 18 supporting documents that also supported 19 those facts that were the bases of my opinion 20 in 2004.</p> <p>21 Q. And what do you mean by, quote, 22 in 2004, I warned about the crisis?</p> <p>23 A. I mean, in 2000 --</p> <p>24 Do you want to know what I</p>	<p>1 otherwise allowed to answer --</p> <p>2 Q. Dr. Egilman, I just asked you a 3 question. "In 2004, I warned about the 4 crisis." What do you mean by that?</p> <p>5 A. Okay. I mean that I told 6 Purdue Pharma the following facts and 7 opinions.</p> <p>8 And the first paragraph, "The 9 drug was originally marketed for managing 10 severe pain; however, Purdue aggressively 11 marketed OxyContin through an advertising 12 campaign" --</p> <p>13 Q. Okay, Dr. Egilman, we have the 14 report in front of us, so I'm going to note 15 that your answer is incomplete.</p> <p>16 Is it fair to say that --</p> <p>17 MS. CONROY: I object to the 18 way this questioning is going. Go 19 right ahead, but that's not the way 20 the Special Master intended 21 interruptions to take place.</p> <p>22 Q. (BY MS. NEWMARK) What do you 23 mean by "crisis"?</p> <p>24 A. I mean that there were -- well,</p>
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<p>1 mean?</p> <p>2 Q. Yes.</p> <p>3 A. Okay. That's not a yes-or-no 4 question. You're aware of that?</p> <p>5 Q. What do you mean by "In 2004, I 6 warned about the crisis"?</p> <p>7 A. Okay. Do you want the short 8 answer or the long answer?</p> <p>9 Q. I'd like you to please give me 10 an answer in accordance with Special Master 11 Cohen's directive yesterday.</p> <p>12 MS. CONROY: Objection. Then 13 you better state what that directive 14 is, because I think we understand it, 15 but I'm not sure you do.</p> <p>16 Q. (BY MS. NEWMARK) Dr. Egilman, 17 what do you mean by "In 2004, I warned about 18 the crisis"?</p> <p>19 A. Okay. My understanding, given 20 your admonition of Special Master Cohen's 21 ruling, was that you can cut me off anytime 22 you want once I start answering a question.</p> <p>23 So that's -- and that's how 24 I'll answer the question. But then I'm</p>	<p>1 yeah. This is what I mean by crisis. 2 So you've got OxyContin 3 prescriptions going up, and you have 4 concomitantly addiction going up, and deaths 5 going up. And that that started when 6 OxyContin's marketing entered.</p> <p>7 In addition to that, you have 8 the generation of a variety of pill mills 9 that Purdue promoted and allowed to occur, 10 resulting in the dispersion of OxyContin 11 throughout the population with and without 12 prescriptions.</p> <p>13 And that as a result of 14 Purdue's actions, OxyContin was overused by 15 the medical community and people got addicted 16 and died. And that that became a crisis 17 because the number of people who were 18 addicted and died increased dramatically once 19 Purdue began its marketing campaign.</p> <p>20 Q. And, Dr. Egilman, you just 21 pulled out a chart. May I see the chart, 22 please?</p> <p>23 Is this a chart that you 24 created?</p>

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<p>1 A. No.</p> <p>2 Q. Is this a chart that you showed</p> <p>3 Purdue in 2004?</p> <p>4 A. No.</p> <p>5 Q. All of these opinions on page</p> <p>6 53 to 61 which you've testified were opinions</p> <p>7 that you rendered in 2004, did you give those</p> <p>8 opinions to the FDA?</p> <p>9 A. No. I was not allowed. There</p> <p>10 was a confidentiality order in the case.</p> <p>11 Q. Did you give those opinions to</p> <p>12 the DEA?</p> <p>13 A. Same answer. I was not</p> <p>14 allowed. There was a confidentiality order</p> <p>15 in the case. And I had already gotten in</p> <p>16 trouble for releasing documents under a</p> <p>17 confidentiality order at the time I came in</p> <p>18 possession of these documents.</p> <p>19 Q. In 2004, did you have concerns</p> <p>20 about opioid prescribing generally?</p> <p>21 A. Yes.</p> <p>22 Q. Apart from things that you</p> <p>23 learned over the course of the cases that you</p> <p>24 worked on?</p>	<p>1 bolded part, reading "However, Purdue Pharma</p> <p>2 aggressively marketed OxyContin through an</p> <p>3 advertising campaign that misled health</p> <p>4 providers and the public about the dangers of</p> <p>5 OxyContin."</p> <p>6 Did I read that right?</p> <p>7 A. You did.</p> <p>8 Q. And when you say "Purdue Pharma"</p> <p>9 aggressively marketed OxyContin," what do you</p> <p>10 mean by "aggressive"?</p> <p>11 A. Well, I think that probably a</p> <p>12 lot of that is in the next five or six pages</p> <p>13 here, but some things may not have been</p> <p>14 included here.</p> <p>15 They had a very large sales</p> <p>16 force. They encouraged the sales force to</p> <p>17 tell physicians that the addiction rates were</p> <p>18 low, less than 1%. They encouraged the sales</p> <p>19 force to use the drug for chronic</p> <p>20 non-malignant pain which was not an</p> <p>21 indication in the label.</p> <p>22 They encouraged the sales force</p> <p>23 to increase the dosing so that profits would</p> <p>24 increase. So they wanted it as a specific</p>
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<p>1 A. Yes.</p> <p>2 Q. And did you describe those</p> <p>3 concerns apart from the cases that you worked</p> <p>4 on to the FDA?</p> <p>5 A. No. Those concerns were based</p> <p>6 on publicly available information.</p> <p>7 Q. Did you tell the FDA at all</p> <p>8 that you were concerned based on the publicly</p> <p>9 available information?</p> <p>10 A. Not -- no.</p> <p>11 Q. So you only expressed those</p> <p>12 concerns when you were retained by</p> <p>13 plaintiffs' counsel; correct?</p> <p>14 A. No.</p> <p>15 MS. CONROY: Objection.</p> <p>16 THE WITNESS: I only expressed</p> <p>17 those concerns when I got the</p> <p>18 documents that indicated how Purdue</p> <p>19 was illegally marketing and promoting</p> <p>20 the use of its drugs and causing</p> <p>21 overuse of those drugs.</p> <p>22 Q. (BY MS. NEWMARK) Let's look at</p> <p>23 paragraph 1 on page 53. The fifth line down</p> <p>24 begins a sentence almost toward -- after the</p>	<p>1 program to get people to switch to</p> <p>2 80 milligrams.</p> <p>3 They aggressively misled the</p> <p>4 physician community about Q12 dosing. And</p> <p>5 that Q12 dosing by itself was an</p> <p>6 addiction-generating machine.</p> <p>7 So those are -- those are some</p> <p>8 of the things that they did that were</p> <p>9 aggressive.</p> <p>10 They also off-label marketed.</p> <p>11 They were cited for some of that off-label</p> <p>12 marketing by the FDA, and then pled guilty</p> <p>13 to -- well, actually, the non-functioning</p> <p>14 entity subsidiary pled guilty to criminal</p> <p>15 conduct for the acts of the parents, and that</p> <p>16 the pleadings indicated a variety of other</p> <p>17 specific aggressive marketing techniques that</p> <p>18 were used to mislead information and</p> <p>19 encourage prescribing.</p> <p>20 They were aware of pill mills,</p> <p>21 and they didn't do anything to stop pill</p> <p>22 mills from prescribing. They didn't have any</p> <p>23 suspicious order monitoring program.</p> <p>24 For example, when Seid found</p>

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<p>1 that ordering increased dramatically, he 2 would review --</p> <p>3 Q. Dr. Egilman, I asked you how 4 you defined aggressive. So I move to strike 5 everything from 88:15 on.</p> <p>6 And I'll note that your answer 7 is incomplete.</p> <p>8 How do you define "aggressive"?</p> <p>9 A. In this case I defined it by 10 the acts that I just started to try to 11 describe.</p> <p>12 Q. And you talked earlier about 13 the size of Purdue's sales force. How big 14 was Purdue's sales force at the launch of 15 OxyContin?</p> <p>16 A. I think I've got a sales force 17 overtime document on that that I've seen. I 18 think probably 2 or 300 at the beginning, 19 something like that.</p> <p>20 Q. Have you ever done any analysis 21 of Purdue's sales force as compared to the 22 sales forces of other manufacturers of 23 Schedule II narcotics at around the same time 24 period?</p>	<p>1 marketing programs in the general medical 2 journals that I subscribed to.</p> <p>3 Q. Have you done any quantitative 4 analysis comparing the sales practices, 5 including the size of the sales force of 6 Purdue, for OxyContin at the launch of 7 OxyContin to other manufacturers of 8 Schedule II narcotics at around the same 9 time?</p> <p>10 A. No, but that's difficult to do 11 because Purdue is relatively unique in 12 that --</p> <p>13 Q. Dr. Egilman, I asked you a 14 yes-or-no question, and you answered no. So 15 we'll move on.</p> <p>16 MS. CONROY: Objection.</p> <p>17 THE WITNESS: Great. Just note 18 that my answer was incomplete.</p> <p>19 MS. NEWMARK: I'll note that 20 your answer was incomplete.</p> <p>21 Q. (BY MS. NEWMARK) You also 22 referred to, on page 53, paragraph 1, a 23 marketing piece that Purdue developed called 24 "Myths About Opioids"; correct?</p>
<p style="text-align: center;">Page 556</p> <p>1 A. No.</p> <p>2 Q. Have you ever done any analysis 3 comparing sales practices of OxyContin to 4 sales practices and marketing practices of 5 manufacturers of other opioids at around the 6 same time period?</p> <p>7 A. Yes.</p> <p>8 Q. And what analysis was that?</p> <p>9 A. Well, I reviewed the sales 10 practices of a lot of the other companies 11 involved in litigation.</p> <p>12 For example, Roxane, which had 13 a similar drug, kind of approved in 1998 but 14 not sold, and then approved again and sold in 15 2000, 2001. And they didn't have, as I 16 recall, a very aggressive marketing program. 17 They didn't have any advertisements in JAMA 18 that were illegal, for example, or in any 19 other medical magazines I can recall.</p> <p>20 The only narcotic 21 advertisements that I can recall seeing 22 during that time period were Purdue Pharma 23 advertising in journals. I don't recall any 24 other pharmaceutical company with opioid</p>	<p style="text-align: center;">Page 558</p> <p>1 A. Correct.</p> <p>2 Q. And you criticized that piece, 3 "Myths About Opioids"; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And in general, I'm going to 6 sum, in the interest of time, you think that 7 it was misleading; correct?</p> <p>8 A. I certainly agree that it was 9 misleading, among other things.</p> <p>10 (Whereupon, Deposition Exhibit 11 Egilman 32, Transmittal of 12 Advertisements and Promotional 13 Labeling for Drugs and Biologics for 14 Human Use, PPLP000665729-665769, was 15 marked for identification.)</p> <p>16 Q. (BY MS. NEWMARK) I've marked 17 as Exhibit 32, a document which the court 18 reporter is going to show you now. Have you 19 ever seen this document before?</p> <p>20 MS. CONROY: Do you have a copy 21 for me?</p> <p>22 MS. NEWMARK: I do.</p> <p>23 THE WITNESS: This is the --</p> <p>24 Q. (BY MS. NEWMARK) Have you ever</p>

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<p>1 seen this document before?</p> <p>2 A. I don't know. I'm trying to --</p> <p>3 I think so, yes.</p> <p>4 Q. Do you know what it is?</p> <p>5 A. It's the submission of the ad</p> <p>6 to the FDA under the regulations where you</p> <p>7 have to submit ads to the FDA.</p> <p>8 Q. And is this a -- and that's</p> <p>9 pursuant to Section 2253; right?</p> <p>10 A. Correct.</p> <p>11 Q. And is this a submission for</p> <p>12 the "Myths About Opioids" brochure to the FDA</p> <p>13 pursuant to 2253?</p> <p>14 A. It is.</p> <p>15 Q. So through the 2253 process,</p> <p>16 the FDA is to review these submissions;</p> <p>17 correct?</p> <p>18 MS. CONROY: Objection.</p> <p>19 THE WITNESS: No.</p> <p>20 Q. (BY MS. NEWMARK) What is your</p> <p>21 understanding of the 2253 process?</p> <p>22 A. The companies have to submit</p> <p>23 them to the FDA. The FDA looks at a</p> <p>24 teeny-weeny portion of them, and evaluates</p>	<p>1 FDA to review this document?</p> <p>2 A. No.</p> <p>3 MS. CONROY: Objection.</p> <p>4 THE WITNESS: Everybody in the</p> <p>5 business knows the FDA doesn't look at</p> <p>6 them. It doesn't have the staff to</p> <p>7 look at them. In 2004, they had six</p> <p>8 people to do all the reviews of 30 to</p> <p>9 50,000 submissions.</p> <p>10 Q. (BY MS. NEWMARK) Well, you</p> <p>11 don't know what the expectation was of Purdue</p> <p>12 or any pharmaceutical company with respect to</p> <p>13 what the FDA would or wouldn't do; right?</p> <p>14 A. That's not true.</p> <p>15 Q. Are you aware that the FDA can</p> <p>16 tell a pharmaceutical company not to use</p> <p>17 certain marketing materials if the FDA</p> <p>18 believes those marketing materials are</p> <p>19 misleading?</p> <p>20 A. Yes.</p> <p>21 Q. And did the FDA do so with the</p> <p>22 "Myths About Opioids" brochure that's</p> <p>23 attached to the 2253 form here?</p> <p>24 A. No.</p>
<p>1 them.</p> <p>2 Generally they only evaluate</p> <p>3 for critical review advertisements where one</p> <p>4 company squeals on another company and</p> <p>5 complains about its illegal marketing based</p> <p>6 on the -- based on the marketing campaign</p> <p>7 that results.</p> <p>8 Q. Has the FDA ever issued any</p> <p>9 sort of official statement saying that it</p> <p>10 only reviews a small portion, or in your</p> <p>11 words a teeny-weeny portion, of the 2253</p> <p>12 submissions it receives?</p> <p>13 A. I think Gottlieb said something</p> <p>14 like that in a public statement when he was</p> <p>15 talking about opioids.</p> <p>16 That's all I can recall from</p> <p>17 the FDA per se.</p> <p>18 Q. And that wasn't in -- that</p> <p>19 wasn't in 1996, was it?</p> <p>20 A. No.</p> <p>21 Q. And so at the time that Purdue</p> <p>22 submitted the 2253 form that you have before</p> <p>23 you to the FDA, would you agree that it would</p> <p>24 have been reasonable for Purdue to expect the</p>	<p>1 Q. Let's move on to paragraph</p> <p>2 of -- on page 53 of Exhibit 1F.</p> <p>3 You state in this paragraph</p> <p>4 that you reviewed the Physicians' Desk</p> <p>5 Reference; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And that was for OxyContin?</p> <p>8 A. Correct.</p> <p>9 Q. What's a Physicians' Desk</p> <p>10 Reference?</p> <p>11 A. It's a compilation of</p> <p>12 FDA-approved labels that are mailed to all</p> <p>13 practicing physicians in the country for</p> <p>14 free.</p> <p>15 But in order to get into the</p> <p>16 PDR, the company has to pay for the space.</p> <p>17 So it doesn't include all labels.</p> <p>18 Q. And in paragraph 3 you said</p> <p>19 that you reviewed the product labeling for</p> <p>20 OxyContin from 1999 to 2001; right?</p> <p>21 A. Correct.</p> <p>22 Q. Why did you review the labeling</p> <p>23 only from 1999 to 2001?</p> <p>24 MS. CONROY: Objection.</p>
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<p>1 THE WITNESS: Because that's 2 when I started to consider using the 3 drug.</p> <p>4 Q. (BY MS. NEWMARK) Have you ever 5 seen the initial label for OxyContin?</p> <p>6 A. In 1996? Yes.</p> <p>7 Q. Have you reviewed that label in 8 detail?</p> <p>9 A. Yes.</p> <p>10 MS. NEWMARK: I'm going to mark 11 as Exhibit 33.</p> <p>12 (Whereupon, Deposition Exhibit 13 Egilman 33, OTHER/OxyContin Tablets 14 NDA #20-553, PDD1501603661-1501603669, 15 was marked for identification.)</p> <p>16 Q. (BY MS. NEWMARK) Dr. Egilman, 17 do you recognize this document that's been 18 marked as Exhibit 33?</p> <p>19 A. Yes.</p> <p>20 Q. And what is it?</p> <p>21 A. It's the initial approved 22 label --</p> <p>23 Q. And you --</p> <p>24 A. -- for OxyContin.</p>	<p>1 that someone needs a prescription from a 2 doctor to obtain prescription opioids; 3 correct?</p> <p>4 Legally; correct?</p> <p>5 A. Legally, correct.</p> <p>6 Q. And would you agree that the 7 doctor serves as the learned intermediary, to 8 use a legal term, between the drug company 9 and the patient receiving the pharmaceutical?</p> <p>10 MS. CONROY: Objection.</p> <p>11 THE WITNESS: No. Not in these 12 cases.</p> <p>13 Q. (BY MS. NEWMARK) In general, 14 do you agree --</p> <p>15 MS. CONROY: Objection.</p> <p>16 Q. (BY MS. NEWMARK) -- that the 17 doctor serves as the person who's supposed to 18 use their judgment to decide whether a drug 19 is beneficial for the patient receiving it?</p> <p>20 MS. CONROY: Objection.</p> <p>21 THE WITNESS: I wouldn't put it 22 exactly that way, no.</p> <p>23 Q. (BY MS. NEWMARK) For any drug, 24 would you agree that a doctor is supposed to</p>
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<p>1 Q. And you said that you've 2 reviewed this before; right?</p> <p>3 A. Correct.</p> <p>4 Q. Are you aware that the FDA must 5 approve all labels for prescription drugs?</p> <p>6 A. It's a negotiated process and 7 final approval has to be done by the FDA.</p> <p>8 Q. And the negotiated process can 9 sometimes take a long time; right?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know why the process 12 takes a long time?</p> <p>13 A. Yes.</p> <p>14 Q. Why is that?</p> <p>15 A. Because generally the companies 16 want language that's favorable to them that 17 minimizes side effects and enhances benefits, 18 and the FDA doesn't agree and they have a 19 struggle about that. The company wants to be 20 able to use a label as favorable to them as 21 possible with respect to how much money they 22 can make using the label to sell the 23 products.</p> <p>24 Q. And you testified yesterday</p>	<p>1 know what is in the label for any drug that 2 they're prescribing?</p> <p>3 A. Can't happen. It's not 4 possible. Not -- it's not possible. It may 5 be a supposed to, but it's not possible.</p> <p>6 Q. Well, when you -- strike that. 7 You said that you've treated 8 patients in the past; right?</p> <p>9 A. Yes.</p> <p>10 Q. And you've prescribed them 11 drugs; right?</p> <p>12 A. Yes.</p> <p>13 Q. And for the drugs that you 14 prescribed, did you know what was in the 15 label for those drugs?</p> <p>16 A. For -- in a general way? Yes. 17 Did I --</p> <p>18 These labels are usually 6-type 19 print and, you know, 15 to 20 pages. So I 20 wouldn't know everything that was in them. 21 When I was writing the prescription, I would 22 generally refer, first, look at the black 23 box. Then you look at the dose. Then you 24 look at the indication. And you look at the</p>

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<p>1 major -- the contraindications, warnings. 2 You certainly generally 3 wouldn't look at the long list that used to 4 be in the label of adverse events reported 5 during the studies. Most people ignore that 6 section. It's appropriate, probably, to 7 ignore that section.</p> <p>8 So, you know, you look at some 9 parts of the label.</p> <p>10 You know, it takes you more 11 than 15 minutes to read this label. Maybe 12 more than a half an hour to read it. And 13 actually, probably take more than a half an 14 hour to read this label. Most physicians 15 have 10 to 15 minutes per patient. Some 16 patients may get -- most patients get more 17 than one drug. So you don't spend three 18 hours with each patient reviewing the label 19 every time you give them a drug.</p> <p>20 Q. But you were saying you 21 don't -- just because you don't review the 22 full label doesn't mean doctors shouldn't 23 review the full label; right?</p> <p>24 A. I don't know any physician who</p>	<p>1 you list a number of omissions and 2 misrepresentations that you think that Purdue 3 either omitted from or misrepresented from 4 the label; right?</p> <p>5 A. Correct.</p> <p>6 Q. And what's the basis for your 7 opinion -- strike that.</p> <p>8 Let's start with the omissions, 9 towards the top of page 54.</p> <p>10 A. I'm there.</p> <p>11 Q. You list four omissions, A, B, 12 C, and D; right?</p> <p>13 A. Correct.</p> <p>14 Q. What is the basis for your 15 opinion that A, B, C, and D should have been 16 included in the label for OxyContin?</p> <p>17 A. Prior drug addiction is a -- 18 should be listed as a contraindication. I 19 think there's literature that shows a prior 20 drug addiction is a contraindication to the 21 use of opioids.</p> <p>22 And so that's my basis for 23 that. I don't think that's very 24 controversial.</p>
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<p>1 I've ever spoken to who's has read the full 2 label on every drug they've -- on any drug 3 they've written when they write the drug.</p> <p>4 And you've got to remember, unless you do 5 that, you're not necessarily reading the 6 right label because these labels can change 7 during the year.</p> <p>8 So if I'm reading a PDR from 9 this year, there may have been an update sent 10 by mail for one or more of the drugs in there 11 that I may be using. There's no way to fit 12 that in.</p> <p>13 If it's not a drug I use often, 14 I'm not going to read it, if it's a drug that 15 I may use that drug during the year. So 16 that's what the real practice of medicine is.</p> <p>17 Q. Have you taken any surveys of 18 any doctors in Cuyahoga or Summit County and 19 asked them how much of a label they review?</p> <p>20 A. No.</p> <p>21 Q. Let's turn back to Exhibit 1F.</p> <p>22 Let's turn to pages 53 and 54.</p> <p>23 Starting on page -- on page 53, 24 paragraph 3, and then continuing on to 54,</p>	<p>1 Second one -- 2 Did you just ask for the first 3 one?</p> <p>4 Q. Well, we --</p> <p>5 A. I mean --</p> <p>6 Q. Let's do --</p> <p>7 A. Oh, you asked for all four. So 8 do you want to go to the next one now?</p> <p>9 Q. Let's -- I'll take your answer 10 for A.</p> <p>11 Let's go to B, "Purdue failed 12 to include the risk of addiction in the 13 label's warning or precautions section."</p> <p>14 Did I read that right?</p> <p>15 A. You did.</p> <p>16 Q. Let's turn back to the 1996 17 label for OxyContin that I showed you as 18 Exhibit 33.</p> <p>19 A. Okay.</p> <p>20 Q. And if you turn to the third 21 page, PDD1501603663. When you flip the page, 22 it will be facing you.</p> <p>23 A. Got it.</p> <p>24 Q. And can you please read to me</p>

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<p>1 what it says, third line down from the very 2 top? 3 A. "Cmax the extent of absorption 4 AUC. See table 1 below"? 5 Q. From the very, very top. 6 Sorry. 7 Starting underneath the line. 8 Then there's three lines of text? 9 A. Oh, okay. It says "OxyContin 10 10 milligrams, 20 milligrams, 40 milligrams. 11 Oxycodone hydrochloride controlled release. 12 Warning: May be habit-forming." 13 Q. But you think there's no risk 14 of addiction in the label itself that should 15 have been in there? 16 A. Right. I mean, "Warning: May 17 be habit-forming" goes with bubble gum. I 18 have a big tub of bubble gum in my office, 19 it's habit-forming. It's not addicting, but 20 it's habit-forming. A habit is not an 21 addiction. 22 Q. But that's your opinion? 23 A. That a habit is not an 24 addiction? I agree. I have a habit of</p>	<p>1 Q. What's a Schedule II controlled 2 substance? 3 A. It's a narcotic that's labeled 4 Schedule II which means it has specific 5 requirements for distribution from a 6 manufacturer's standpoint. It's got to be 7 locked vaults, et cetera. And at the 8 patient-physician level, usually there's a -- 9 you have to do a specific -- now you'd have 10 limitations on how many pills you can give 11 and triple prescription writing and things 12 like that. 13 Q. And -- 14 A. But that wasn't true when I was 15 practicing necessarily. So in the initial 16 time when I was practicing, you could write a 17 Schedule II on a regular prescription. But 18 that's because I'm an old person. 19 Q. Is it one of the features of a 20 Schedule II drug that it does have abuse 21 potential? 22 A. Sure. 23 Q. And what you just read, the 24 sentence underneath "Drug abuse and</p>
<p style="text-align: center;">Page 572</p> <p>1 getting up in the morning and exercising. 2 I'm not addicted to it, unfortunately. 3 Q. Let's -- 4 A. I have a lot of other bad 5 habits too. Probably we can leave that one 6 as an opinion not finished. 7 Q. Let's turn to page 8 PDD1501603667. 9 A. 667? 10 Q. Yes. 11 A. Okeydokey. 12 Q. Let's go to the middle of the 13 page where it says "Drug abuse and 14 dependence." 15 A. Right. 16 Q. What does it say in 17 parentheses? 18 A. "Addiction." 19 Q. And then can you please read 20 the first sentence? 21 A. "OxyContin is a mu agonist 22 opioid with an abuse liability similar to 23 morphine and is a Schedule II controlled 24 substance."</p>	<p style="text-align: center;">Page 574</p> <p>1 dependence," isn't that a warning relating to 2 addiction? 3 A. Doesn't say warning. 4 Q. Does it have to say warning to 5 be a warning? 6 A. It's awful helpful to say 7 warning when it's a warning. And it's also 8 substantively wrong. It's misleading on its 9 face. 10 And intentionally misleading on 11 its face. 12 Q. Dr. Egilman, I'm going to move 13 to strike that entire answer. I asked you a 14 yes-or-no question. 15 Does it have to say warning to 16 be a warning? 17 A. What's "it" refer to? 18 Q. Does what we read -- just read 19 in the label have to be -- have to say 20 warning to be a warning? 21 A. Yes, a warning has -- is 22 specific language in the context of an FDA 23 label. It has a specific meaning, and it 24 must be there to -- for that purpose. It's a</p>

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<p>1 specific requirement to put a warning in. 2 It's a negotiated process, and it has to be 3 there.</p> <p>4 In this context, in order to be 5 a warning, it must start with the word 6 "warning."</p> <p>7 Q. You -- on page 54, paragraph 3, 8 Section D, you also state "Purdue failed to 9 list any of the symptoms of opioid 10 withdrawal."</p> <p>11 Did I read that right?</p> <p>12 A. Right.</p> <p>13 Q. Let's turn to page -- and I'll 14 shorten it -- 3665 in Exhibit 33.</p> <p>15 A. Okay.</p> <p>16 Q. Can you please read for me 17 the -- starting from the very, very bottom of 18 the second column. Starting at "Physical 19 dependence."</p> <p>20 A. "Tolerance and physical 21 dependence"?</p> <p>22 Q. And please read for me the 23 second-to-last line in that column for the 24 record.</p>	<p>1 discontinue a drug or may be prescribed 2 through the administration of drugs with 3 opioid antagonist activity, open parenthesis, 4 see overdosage, all caps, closed parenthesis, 5 period."</p> <p>6 Q. Please keep reading.</p> <p>7 A. "If OxyContin is abruptly 8 discontinued in a physically dependent 9 patient, an abstinence syndrome may occur. 10 This is characterized by some or all of the 11 following: Restlessness, lacrimation, 12 rhinorrhea, yawning, respiration [sic], 13 chills, myalgia and mydriasis."</p> <p>14 Q. Okay.</p> <p>15 A. "Other symptoms may also 16 develop including: Irritability, anxiety, 17 backache, joint pain, weakness, abdominal 18 cramps, insomnia, nausea, anorexia, vomiting, 19 diarrhea, or increased blood pressure, 20 respiratory rate, or heart rate. If signs 21 and symptoms of withdrawal occur, patients 22 should be treated by reinstitution of opioid 23 therapy followed by a gradual tapered dose 24 reduction of OxyContin combined with</p>
<p>1 A. "Tolerance to the analgesic 2 effect of opioid" --</p> <p>3 Q. The -- the second-to-last 4 sentence in that column at the bottom.</p> <p>5 A. I was reading the -- I was 6 reading second-to-the-last sentence.</p> <p>7 Q. Starting --</p> <p>8 A. The last sentence starts 9 "Physical dependence."</p> <p>10 Q. I'm sorry, "Physical 11 dependence," the second-to-the-last line?</p> <p>12 A. I was reading -- the 13 second-to-the-last line starts with 14 "Tolerance."</p> <p>15 Q. Beneath that.</p> <p>16 A. That's the last line.</p> <p>17 Q. The last line. "Physical 18 dependence."</p> <p>19 A. Okay. "Physical dependence 20 results" -- remember, I was challenged on my 21 English reading ability.</p> <p>22 Q. Okay.</p> <p>23 A. "Physical dependence results in 24 withdrawal symptoms in patients who abruptly</p>	<p>1 symptomatic support, open parenthesis, see 2 dosage administration in all caps, cessation 3 of therapy, closed parenthesis."</p> <p>4 Q. Okay. Dr. Egilman, what you 5 just read there, aren't those signs and 6 symptoms of withdrawal?</p> <p>7 A. They are.</p> <p>8 Q. And yet on page 54, under 9 omissions D, you say failed -- "Purdue failed 10 to list any of the symptoms of opioid 11 withdrawal"; right?</p> <p>12 A. Correct.</p> <p>13 Q. So is that statement D wrong?</p> <p>14 A. Yes.</p> <p>15 She went to Brown. Very good. 16 She didn't take my course. She would have 17 been better.</p> <p>18 Q. Move to strike that.</p> <p>19 Part of that. The second part.</p> <p>20 Okay. On page 54, you also 21 list in the middle of the page -- at page 54 22 of Exhibit 1, you also list in the middle of 23 the page "Misrepresentations"; right?</p> <p>24 A. I do.</p>

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<p>1 Q. And to -- in the interest of 2 time I'm just going to paraphrase. One of 3 the misrepresentations you claim are in the 4 label relate to delayed absorption; right? 5 MS. CONROY: Objection. 6 THE WITNESS: Correct. 7 Q. (BY MS. NEWMARK) And the -- 8 specifically the line "Delayed absorption as 9 provided by OxyContin tablets is believed to 10 reduce the abuse liability of the drug"; 11 right? 12 A. In combination with the 13 previous question, yes. 14 Q. This -- this is what -- I'm 15 going to refer to that line as delayed 16 absorption language; is that okay? 17 A. Sure. 18 Q. This delayed absorption 19 language within the label, right? 20 A. It's a quote from the label, 21 and it's cited from the label. 22 Q. Are you aware that this label 23 was fully considered and vetted by the FDA? 24 MS. CONROY: Objection.</p>	<p>1 A. I do. 2 Q. And what are those notes? 3 A. Do you want me to read them? 4 Q. Yes, please. 5 A. Dash MS Contin, dash Roxane, 6 dash 160-milligram dose, dash EERW, dash 7 Action, dash Impact, and more. 8 Q. What is Exhibit B462? 9 A. Do you mean do you want me to 10 read the title? 11 Q. Sure. 12 A. "Opinion. This is the timeline 13 of FDA activity that FDA created of its 14 activities related to opioid addiction. It 15 omits regulatory capture." And all those 16 other things I put down in notes. 17 Q. Can you please turn to page 2 18 of 38 of Exhibit B462? 19 A. Sure. 20 Q. And this is a document that you 21 pulled from the website listed here; right? 22 A. I think so. 23 Q. On the first page? 24 Okay. So this is on the FDA's</p>
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<p>1 THE WITNESS: No. 2 Q. (BY MS. NEWMARK) Have you 3 reviewed the package insert submission to the 4 FDA from 1994? 5 A. Yes. 6 Q. And are you aware that there 7 was correspondence between Purdue and the FDA 8 on the delayed absorption language? 9 A. Yes. 10 Q. And ultimately this was the 11 language that the FDA approved; correct? 12 A. They allowed it to go on the 13 label, right. 14 Q. Do you disagree with the FDA's 15 approval of this language? 16 A. Yes. 17 Q. And let's look at exhibit -- 18 the exhibit to your report B462. 19 And I can show you my copy. 20 Dr. Egilman, is that your 21 version of Exhibit 462? 22 A. Yes. 23 Q. And do you have notes on that 24 version?</p>	<p>1 website; right? 2 A. That's my understanding. 3 Q. Can you -- 4 A. It was when I pulled it off. 5 Q. I'm going to represent to you 6 that this is still on the FDA's website 7 today. Or as of when I last checked last 8 week. Okay? 9 A. No problem. I wasn't 10 challenging that. I'm just trying to answer 11 the questions. 12 Q. Okay. Can you please read, on 13 page 2 of 38, towards the bottom. There are 14 two bullet points. Can you please read the 15 first bullet point, the first sentence of the 16 first bullet point? 17 A. "At the time of approval, FDA 18 believed the controlled release formulation 19 of OxyContin would result in less abuse 20 potential since the drug would be absorbed 21 slowly and therefore would not be an 22 immediate, open quote, rush, closed quote, or 23 a high that would promote abuse." 24 Q. And this is on the FDA's</p>

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<p>1 website; right?</p> <p>2 A. Correct.</p> <p>3 Q. And you disagree with what the</p> <p>4 FDA has as -- currently has on its website?</p> <p>5 A. Do you want to limit that to</p> <p>6 this paragraph and that sentence? They have</p> <p>7 a lot of things on their website. It's a</p> <p>8 very large website.</p> <p>9 Q. I'll re-ask the question.</p> <p>10 You said earlier that you</p> <p>11 disagree with the FDA's decision to approve</p> <p>12 the controlled release formulation part of</p> <p>13 the label; right?</p> <p>14 A. Yes.</p> <p>15 Q. And here, the FDA talks about</p> <p>16 how it believed the controlled release</p> <p>17 formulation would result in less abuse</p> <p>18 potential; right?</p> <p>19 A. That's what they say they</p> <p>20 believed.</p> <p>21 Q. Do you have any reason to</p> <p>22 disagree with that?</p> <p>23 A. Yes.</p> <p>24 Q. But the FDA still has this on</p>	<p>1 Q. And did the FDA take any action</p> <p>2 with respect to the -- with respect to your</p> <p>3 concerns about that part of the label after</p> <p>4 you testified before the FDA?</p> <p>5 A. Nope.</p> <p>6 Q. Let's turn to page 58 of</p> <p>7 Exhibit 1F. And look at paragraphs 13 and</p> <p>8 14.</p> <p>9 A. Okay.</p> <p>10 Q. And I'm going to paraphrase</p> <p>11 here and you can tell me if I'm wrong. I'm</p> <p>12 just trying to save some time for my</p> <p>13 colleagues down the table.</p> <p>14 These paragraphs relate to your</p> <p>15 disagreement with the use of OxyContin for</p> <p>16 Q12-hour dosing; right?</p> <p>17 MS. CONROY: Objection.</p> <p>18 THE WITNESS: Paragraphs 13 and</p> <p>19 which one? 13 and 14?</p> <p>20 Q. (BY MS. NEWMARK) 13 and 14.</p> <p>21 A. Correct.</p> <p>22 Q. Are you aware that the FDA</p> <p>23 approved OxyContin for Q12-hour dosing?</p> <p>24 A. Yes.</p>
<p>1 its website?</p> <p>2 A. Yes.</p> <p>3 Q. Have you ever told the FDA that</p> <p>4 you disagree with what's on its website?</p> <p>5 A. Not with what is on its</p> <p>6 website, but this specific item, yes.</p> <p>7 Q. And when did you tell the FDA</p> <p>8 that you disagreed with that specific item?</p> <p>9 A. In 2013 when I gave that</p> <p>10 presentation at the FDA hearing on opioids.</p> <p>11 Q. Are you referring to the</p> <p>12 testimony before the FDA Center for Drug</p> <p>13 Evaluation and Research in 2013?</p> <p>14 A. Yeah. It's only one testimony</p> <p>15 made in that year, so if that's --</p> <p>16 I don't remember what the name</p> <p>17 of the committee was, but yeah.</p> <p>18 Q. And was that titled "Impact of</p> <p>19 approved drug labeling on chronic opioid</p> <p>20 therapy"?</p> <p>21 A. Do you mean if that was the</p> <p>22 title of the hearing? Yes. I believe.</p> <p>23 Something like that. It was on</p> <p>24 labeling.</p>	<p>1 Q. And let's turn to Exhibit 33,</p> <p>2 the page ending in 3668.</p> <p>3 A. Okay.</p> <p>4 Q. The first paragraph -- the</p> <p>5 first full paragraph on the left column, can</p> <p>6 you please read the second sentence?</p> <p>7 A. The controlled release nature</p> <p>8 of the formulation allows it to be</p> <p>9 effectively administered every 12 hours.</p> <p>10 Open parenthesis, see clinical pharmacology,</p> <p>11 semicolon, pharmacokinetics and metabolism,</p> <p>12 period, closed parenthesis.</p> <p>13 Q. And this is in the labeling</p> <p>14 that was approved by the FDA; right?</p> <p>15 A. Yes.</p> <p>16 Q. Do you disagree with that</p> <p>17 language?</p> <p>18 A. Yes.</p> <p>19 Q. I'm going to hand you what's</p> <p>20 going to be marked as Exhibit 34.</p> <p>21 (Whereupon, Deposition Exhibit</p> <p>22 Egilman 34, 3-8-96 letter to Diane</p> <p>23 Shnitzler with attachments,</p> <p>24 PPLP000614833-614856, and Opinion-This</p>
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<p>1 is the timeline of FDA activity 2 related to opioid addiction-it omits 3 regulatory capture, was marked for 4 identification.)</p> <p>5 Q. (BY MS. NEWMARK) Dr. Egilman, 6 have you ever seen this document before?</p> <p>7 A. The approval letter?</p> <p>8 Q. Exhibit 34?</p> <p>9 A. Oh, this one? Oh. Hang on a 10 second.</p> <p>11 I've seen the ad before. I 12 don't think I've seen the cover letter.</p> <p>13 Q. And it's from Lee Ann Storey at 14 the Purdue Frederick Company, and addressed 15 to Diane Shnitzler at the Division of Drug 16 Marketing Advertising and Communications, 17 Food and Drug Administration; right?</p> <p>18 A. Correct. It's on Purdue Pharma 19 stationery.</p> <p>20 Q. What's the date on this 21 document?</p> <p>22 A. March 8, 1996.</p> <p>23 Q. And if I represent to you that 24 this was promotional material submitted to</p>	<p>1 Q. And do you see where it says 2 "The analgesic efficacy"?</p> <p>3 A. I do.</p> <p>4 Q. Can you please read that 5 sentence, that line and the line below it for 6 the record?</p> <p>7 A. "The analgesic efficacy of 8 immediate release oxycodone, the ease of Q12 9 dosing. 12 hours of smooth and reliable pain 10 control. Less frequent dosing than Percocet, 11 Vicodin, or Tylenol with codeine."</p> <p>12 Q. Are you -- withdrawn.</p> <p>13 You testified earlier that you 14 know the FDA can tell a company not to -- not 15 to use certain marketing materials if they 16 believe them to be false or misleading; 17 right?</p> <p>18 A. They can do that.</p> <p>19 Q. And the FDA certainly could 20 have done that here; right?</p> <p>21 A. They could have done that.</p> <p>22 Q. Especially if it found the 23 Q12-hour dosing language misleading; right?</p> <p>24 A. They could have done that, if</p>
<p style="text-align: center;">Page 588</p> <p>1 the FDA at the time OxyContin was launched, 2 would you have any reason to disagree with 3 me?</p> <p>4 A. No.</p> <p>5 Q. Are you aware that the FDA has 6 to approve promotional materials for a drug 7 when the drug is launched?</p> <p>8 A. The FDA has to -- promotional 9 materials --</p> <p>10 The answer is no. They don't 11 do that.</p> <p>12 There's no approval -- there's 13 no letter coming back from the FDA saying "We 14 approve your promotional materials" that I've 15 seen.</p> <p>16 Q. You would agree that this 17 promotional material was sent to the FDA; 18 right?</p> <p>19 A. I have no reason to dispute 20 that this is the letter that was sent to the 21 FDA.</p> <p>22 Q. Can you please turn to the page 23 ending in one -- the page PPLP000614836.</p> <p>24 A. Okay.</p>	<p style="text-align: center;">Page 590</p> <p>1 they --</p> <p>2 Q. Did they --</p> <p>3 A. If they read it, they could 4 have done that.</p> <p>5 Q. Did they tell Purdue not to use 6 these promotional materials here?</p> <p>7 A. They gave no comment on this 8 submission. They did not write a letter 9 saying this is okay, and they did not write a 10 letter saying this is not okay.</p> <p>11 Q. So the FDA never told Purdue 12 not to use these promotional materials?</p> <p>13 A. They never told them it was 14 okay, and they never told them it wasn't.</p> <p>15 Q. You've made your opinions about 16 12-hour dosing known to the FDA; right?</p> <p>17 A. I did.</p> <p>18 Q. And that was during the 2013 19 testimony before the Center for Drug 20 Evaluation and Research?</p> <p>21 A. Correct. It was delayed six 22 years.</p> <p>23 Q. Did the FDA instruct Purdue to 24 change any of its labeling in light of your</p>

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<p>1 testimony?</p> <p>2 A. No.</p> <p>3 Q. Did you ever express any</p> <p>4 concerns to the FDA about MS Contin?</p> <p>5 A. No. Do you mean the fact that</p> <p>6 Purdue was selling it unapproved? Is that</p> <p>7 what you mean?</p> <p>8 Q. I asked you if you expressed</p> <p>9 any concerns to the FDA about MS Contin?</p> <p>10 A. No.</p> <p>11 Q. One of your opinions relates</p> <p>12 to -- and I'm going to paraphrase again in</p> <p>13 the interest of time. -- you think that the</p> <p>14 MS Contin label shows that the -- that</p> <p>15 OxyContin was underwarned; right?</p> <p>16 A. I'm not sure what you're</p> <p>17 referring to. I don't understand that</p> <p>18 question.</p> <p>19 Q. I'll withdraw that in the</p> <p>20 interest of time.</p> <p>21 On page 85 of your report,</p> <p>22 Exhibit B156. You express the opinion that</p> <p>23 "Purdue misled physicians about the potency</p> <p>24 of OxyContin"; right?</p>	<p>1 A. Yeah. Can I -- do you want</p> <p>2 to --</p> <p>3 Here, let me try this. You can</p> <p>4 tell me anytime you want you've heard enough</p> <p>5 of the answer and I'll stop. Okay?</p> <p>6 What I do not want you to do is</p> <p>7 interrupt my answer except to tell me you've</p> <p>8 heard enough of the answer.</p> <p>9 Q. Okay. Dr. Egilman --</p> <p>10 A. I don't want to be interrupted.</p> <p>11 Q. Dr. Egilman --</p> <p>12 A. You can stop me, no problem,</p> <p>13 but you can't interrupt me with other</p> <p>14 questions because I can only answer one</p> <p>15 question at a time. Otherwise, the record</p> <p>16 gets confused.</p> <p>17 Q. Dr. Egilman, does that -- I'm</p> <p>18 going to note that your answer was</p> <p>19 incomplete.</p> <p>20 Does that document have a Bates</p> <p>21 number?</p> <p>22 A. It does.</p> <p>23 Q. And does that appear in your</p> <p>24 report?</p>
<p>1 A. Oh, you mean the mushroom</p> <p>2 document? Yes.</p> <p>3 Q. Is it your opinion that doctors</p> <p>4 were not aware of the potency of OxyContin?</p> <p>5 A. Yes.</p> <p>6 Q. What is the basis for this</p> <p>7 statement?</p> <p>8 A. This is an e-mail to herself,</p> <p>9 maybe some blind ccs, from Kathe Sackler.</p> <p>10 Kathe Sackler, Wednesday, August 6, 1997.</p> <p>11 "In recent team meetings, we</p> <p>12 have discussed the issue that OxyContin is</p> <p>13 perceived by some physicians, particularly</p> <p>14 oncologists, as not being as strong as</p> <p>15 MS Contin. Although this perception has had</p> <p>16 some effect with physicians switching to</p> <p>17 MS Contin with more severe" cancer</p> <p>18 patients -- "cancer pain patients, it has</p> <p>19 actually had a positive effect of physician's</p> <p>20 use of non-cancer pain."</p> <p>21 Q. Dr. Egilman?</p> <p>22 A. "Since OxyContin" --</p> <p>23 Q. Dr. Egilman, does that document</p> <p>24 have a Bates number on it?</p>	<p>1 A. It does.</p> <p>2 Q. What's the Bates number on that</p> <p>3 document?</p> <p>4 A. PDD8801118262.</p> <p>5 Q. May I see it, please?</p> <p>6 A. Sure.</p> <p>7 Q. Is this document the same</p> <p>8 document that appears at Exhibit B156 to your</p> <p>9 report?</p> <p>10 A. I don't know.</p> <p>11 (Witness was handed copies.)</p> <p>12 Q. And what is your opinion at</p> <p>13 B156?</p> <p>14 A. "Physicians had the</p> <p>15 misimpression that OxyContin was less potent</p> <p>16 than MS Contin. Instead of correcting this,</p> <p>17 Purdue took advantage of this ignorance to</p> <p>18 encourage inappropriate use of opioids. And</p> <p>19 I might add in, from the label, Purdue gave</p> <p>20 the impression that more -- that MS Contin</p> <p>21 and OxyContin had equal potency."</p> <p>22 Q. Is that a new opinion that you</p> <p>23 have in this case?</p> <p>24 A. New basis for that same</p>
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<p>1 opinion.</p> <p>2 I missed that before. I just</p> <p>3 reread it when you gave me the label to read.</p> <p>4 So that was your contribution, and I</p> <p>5 appreciate it.</p> <p>6 Q. You said that physicians have</p> <p>7 the misimpression that OxyContin was less</p> <p>8 potent than MS Contin; right?</p> <p>9 A. Yes. When it was actually more</p> <p>10 potent than MS Contin.</p> <p>11 Q. Besides this one e-mail that</p> <p>12 you cite in Exhibit B156, do you have any</p> <p>13 other documents that form the basis for this</p> <p>14 opinion?</p> <p>15 A. Yes.</p> <p>16 Q. Are those included in your</p> <p>17 report?</p> <p>18 A. I think so, and then some of</p> <p>19 them will be in this pile to my right.</p> <p>20 Q. Are you referring to --</p> <p>21 withdrawn.</p> <p>22 Did you do any surveys of any</p> <p>23 doctors to see if they had an impression that</p> <p>24 OxyContin and MS Contin had equal potency?</p>	<p>1 Besides the label.</p> <p>2 Q. Do you know of any physician</p> <p>3 who wrote a medically inappropriate or</p> <p>4 unnecessary prescription based on a</p> <p>5 misperception about the potency of OxyContin?</p> <p>6 A. Personally?</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 Q. Have you taken any surveys to</p> <p>10 determine whether any physicians wrote any</p> <p>11 medically unnecessary prescriptions based on</p> <p>12 a misperception about the potency of</p> <p>13 OxyContin?</p> <p>14 A. No.</p> <p>15 Q. Let's turn to the label. Bates</p> <p>16 number ending in 3668.</p> <p>17 A. How about before your next</p> <p>18 question, we just take a quick break.</p> <p>19 Q. I'm almost done, Dr. Egilman,</p> <p>20 and then we'll have a lunch break.</p> <p>21 A. Well, how much more have you</p> <p>22 got?</p> <p>23 Q. I'm almost done.</p> <p>24 A. How much more do you have?</p>
<p>1 A. No.</p> <p>2 Q. Did you see any marketing</p> <p>3 materials that said that OxyContin and</p> <p>4 MS Contin had equal potency?</p> <p>5 A. Yes.</p> <p>6 Q. Which marketing materials were</p> <p>7 those?</p> <p>8 A. Let's start with the label.</p> <p>9 Right here. Exhibit 33.</p> <p>10 Q. I asked you about marketing</p> <p>11 materials.</p> <p>12 MS. CONROY: Objection.</p> <p>13 Q. (BY MS. NEWMARK) So let's</p> <p>14 start with marketing materials.</p> <p>15 MS. CONROY: Objection.</p> <p>16 Q. (BY MS. NEWMARK) Which</p> <p>17 marketing materials gave the impression that</p> <p>18 MS Contin and OxyContin had equal potency?</p> <p>19 A. Sorry, the label is marketing</p> <p>20 materials.</p> <p>21 Q. Besides the label, which</p> <p>22 marketing materials said that OxyContin and</p> <p>23 MS Contin had equal potency?</p> <p>24 A. Oh, none that I'm aware of.</p>	<p>1 Q. I'm almost done.</p> <p>2 A. What does that mean? In</p> <p>3 English?</p> <p>4 Q. It depends on --</p> <p>5 MS. CONROY: How much time do</p> <p>6 you have left --</p> <p>7 MS. NEWMARK: -- how long your</p> <p>8 answers are. I have about five</p> <p>9 minutes.</p> <p>10 THE WITNESS: How much?</p> <p>11 MS. NEWMARK: Five minutes.</p> <p>12 THE WITNESS: Well, why don't</p> <p>13 we take a quick break. Because I</p> <p>14 don't think your five minutes will be</p> <p>15 good for five minutes.</p> <p>16 THE VIDEOGRAPHER: Off the</p> <p>17 record, 12:08.</p> <p>18 (Recess taken, 12:11 p.m. to</p> <p>19 12:12 p.m.)</p> <p>20 THE VIDEOGRAPHER: We're back</p> <p>21 on the record at 12:13.</p> <p>22 Q. (BY MS. NEWMARK) Dr. Egilman,</p> <p>23 when we -- when we took a break, I asked you</p> <p>24 to look at the label again, the page ending</p>

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<p>1 in 3668.</p> <p>2 A. Okay.</p> <p>3 Q. Can you please look in the</p> <p>4 middle column about two-thirds of the way</p> <p>5 down where it says "Table 3"?</p> <p>6 A. Right.</p> <p>7 Q. Do you know what this table is?</p> <p>8 A. Yeah. It's a conversion table.</p> <p>9 Q. What is it a conversion table</p> <p>10 of?</p> <p>11 A. These are rough morphine</p> <p>12 equivalents for various opioids.</p> <p>13 Q. Would you say here that it</p> <p>14 is -- this table compares the morphine</p> <p>15 equivalence of OxyContin -- withdrawn.</p> <p>16 Would you say that this</p> <p>17 compares different opioids, including</p> <p>18 oxycodone?</p> <p>19 A. In as mis -- yes, in as</p> <p>20 misleading a fashion as possible.</p> <p>21 Q. What is the basis for saying</p> <p>22 "in as misleading fashion as possible"?</p> <p>23 A. Because most people are going</p> <p>24 to look at this, look at -- do numbers in</p>	<p>1 label?</p> <p>2 A. Yes.</p> <p>3 Q. But that's your opinion; right?</p> <p>4 A. That's my opinion based on --</p> <p>5 and based on Sackler's e-mail, this one --</p> <p>6 one could -- one could infer that this was</p> <p>7 done this way, particularly with the language</p> <p>8 that I mentioned before, that you definitely</p> <p>9 pointed out earlier, that this was done on</p> <p>10 purpose with morphine at the bottom and</p> <p>11 oxycodone at the top, rather than just --</p> <p>12 you're talking here about two -- in the</p> <p>13 label, there's two drugs mentioned: Morphine</p> <p>14 and OxyContin.</p> <p>15 So the relevant information</p> <p>16 from giving people information about risks</p> <p>17 and benefits is to compare those two drugs.</p> <p>18 So in the table, I would have started with a</p> <p>19 comparison of oxycodone and morphine,</p> <p>20 comparative potency. And then it would have</p> <p>21 been obvious. Oxycodone would have been a 1</p> <p>22 and morphine was a .5.</p> <p>23 Part of the reason that the</p> <p>24 Purdue team -- not just Kathe Sackler, but</p>
<p style="text-align: center;">Page 600</p> <p>1 sequence from low to high or high to low.</p> <p>2 And you see how the numbers</p> <p>3 here are more or less random? Based on the</p> <p>4 alphabetical order of the drug on the left,</p> <p>5 but the relevant question for a physician in</p> <p>6 looking at this is to know what's the</p> <p>7 relative morphine equivalent. And you want</p> <p>8 to know that first. So this should be</p> <p>9 ordered by morphine equivalent dose. So I</p> <p>10 would start with the most potent and end with</p> <p>11 the least potent.</p> <p>12 And if you did that, then you</p> <p>13 could more easily compare OxyContin --</p> <p>14 oxycodone to morphine sulfate, for example,</p> <p>15 than the others.</p> <p>16 Q. Well, this is in the label that</p> <p>17 the FDA approved for OxyContin at its launch;</p> <p>18 right?</p> <p>19 A. Correct.</p> <p>20 Q. So that means the FDA also</p> <p>21 approved Table 3; right?</p> <p>22 A. Correct.</p> <p>23 Q. And do you disagree with the --</p> <p>24 with the FDA's approval of this table in the</p>	<p style="text-align: center;">Page 602</p> <p>1 the Purdue team believed that physicians were</p> <p>2 in the dark, as it were, is because this</p> <p>3 table was set up the way it was, making it</p> <p>4 hard for a physician to juxtapose oxycodone</p> <p>5 and morphine potency.</p> <p>6 Q. Dr. Egilman, as you said</p> <p>7 earlier, though, that this was -- that the</p> <p>8 table was done in some misleading way is just</p> <p>9 an inference; right?</p> <p>10 A. No. We know the results where</p> <p>11 there was misleading.</p> <p>12 MS. CONROY: Objection.</p> <p>13 THE WITNESS: It's not an</p> <p>14 inference. It's that this label, the</p> <p>15 text that you deftly pointed out</p> <p>16 before, and this table that you have</p> <p>17 now pointed out are part of the reason</p> <p>18 that physicians were kept in the dark,</p> <p>19 or entered the dark and kept in the</p> <p>20 dark with respect to the relative</p> <p>21 potency of oxycodone and morphine.</p> <p>22 Q. (BY MS. NEWMARK) Dr. Egilman,</p> <p>23 have you done any surveys of physicians about</p> <p>24 their understanding of Table 3?</p>

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1	A. No.	1 A. Yeah. The FDA took the
2	Q. So you don't know what	2 opportunity to petition to reinforce all
3	physicians' actual understanding of Table 3	3 the -- all of the wrong decisions that have
4	was, right?	4 been made over the years.
5	A. No. We only know what	5 Q. So you think that the FDA has
6	physicians' actual understanding of the	6 made a series of wrong decisions over the
7	relative potency of morphine and oxycodone	7 years?
8	was based on Purdue's information garnered	
9	from physicians.	8 A. Yes.
10	Q. But that's just from Kathe	9 MS. NEWMARK: Okay. I have no
11	Sackler's e-mail; right?	10 further questions.
12	MS. CONROY: Objection.	11 MR. BLANK: Before we break, I
13	THE WITNESS: No, it's	12 would just want to make a statement
14	summarizing Kathe Sackler's e-mail.	13 for the record that Dr. Egilman's
15	Kathe Sackler's e-mail refers to a	14 opinion and expert report contains 489
16	discussion and meetings on that exact	15 numbered opinions plus pages of
17	issue and an action program on that	16 additional opinions, plus I think
18	exact issue.	17 33,000 related documents in support of
19	Q. (BY MS. NEWMARK) Dr. Egilman,	18 that.
20	during your testimony today, you've testified	19 We are all here to take
21	about a lot of things that you would change	20 Dr. Egilman's deposition. Under the
22	in the label. Is that fair to say?	21 protocol, we have two days.
23	MS. CONROY: Objection.	22 Obviously, given the number of
24	THE WITNESS: I mean, I've	23 defendants and the number of opinions,
		24 it is impossible for any one defendant
	Page 604	Page 606
1	testified about what I've testified	1 to ask Dr. Egilman about each of the
2	about. I don't know how to summarize	2 opinions he purports to offer. We're
3	that.	3 doing the best that we can. We've
4	Q. (BY MS. NEWMARK) You	4 allotted time amongst the defendants
5	understand that there's a citizen's petition	5 to give each defendant some amount of
6	process by which anyone can petition the FDA	6 time for Dr. Egilman, but on behalf of
7	to change a label for a pharmaceutical?	7 Purdue, we think this is inadequate by
8	A. That's correct.	8 a long shot.
9	Q. Have you ever done that for	9 Even if we were the only
10	OxyContin?	10 examiners over the two days, we could
11	A. No.	11 not get through the opinions related
12	Q. Did you ever do that for	12 specifically to Purdue, and I think
13	MS Contin?	13 the other defendants are in the same
14	A. No.	14 situation.
15	Q. Did you ever do that for any of	15 So with that, we'll take the
16	the opioids manufactured by any of the	16 lunch break now and resume with some
17	defendants in this case?	17 of the other defendants.
18	A. No.	18 THE WITNESS: Let me just say
19	Q. Are you aware that a citizen's	19 I'll be glad to answer any questions
20	petition actually was filed with the FDA for	20 that any of the defense have anytime
21	OxyContin?	21 they want to call me up or meet with
22	A. Yes. Kolodny.	22 me. No problem. I'm available. You
23	Q. Do you know what happened with	23 don't have to pay me for it.
24	that petition?	24 MR. BLANK: Excellent.

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<p>1 THE VIDEOGRAPHER: Off the 2 record at 12:22. 3 (Recess taken, 12:22 p.m. to 4 1:19 p.m.) 5 THE VIDEOGRAPHER: We are back 6 on the record at 1:20. 7 THE WITNESS: Before you start, 8 I have another plaintiff time 9 document. So there's my plaintiff 10 time document. 11 MS. LUCAS: Thanks, 12 Dr. Egilman. Is this a document that 13 we've not seen before? 14 THE WITNESS: This is a 15 document I've not brought before. 16 MS. LUCAS: Can we please mark 17 this document for the record as 18 Exhibit 35. 19 (Whereupon, Deposition Exhibit 20 Egilman 35, FDA and Opioids: What's a 21 Regulator to Do? Pain Care Forum. 22 Douglas C. Throckmorton, MD 23 PowerPoint, ENDO-Opioid_MDL-02791998, 24 was marked for identification.)</p>	<p>1 Q. Did you assume that the 2 plaintiffs will prove any particular facts in 3 forming your opinions in this case? 4 A. No. 5 Q. Have you been retained by 6 plaintiffs' counsel in any other opioids 7 litigations other than the MDL? 8 A. Yes. 9 Q. How many? 10 A. The three that we talked about 11 yesterday. 12 Q. And which three are those? 13 A. I don't remember the names of 14 the cases. They're 2004 cases. 15 Q. Have you been retained in any 16 post 2004 opioids litigations? And I'm 17 talking about opioids litigations in the last 18 few years other than the MDL? 19 A. No. 20 Q. You've never spoken to any 21 other counsel for any of the other plaintiffs 22 who are not in the MDL; is that correct? 23 MS. CONROY: Objection. 24 MS. LUCAS: Let me rephrase.</p>
<p style="text-align: center;">Page 608</p> <p>1 EXAMINATION 2 BY MS. LUCAS: 3 Q. Dr. Egilman, I have been 4 granted very limited time to ask you 5 questions even though I have a lot of 6 questions for you, so I'm going to ask you a 7 lot of yes-or-no questions and I would like a 8 yes-or-no answer from you whenever possible. 9 Will you do that for me? 10 A. Sure. 11 Q. Thank you. Were you asked to 12 make any assumptions in forming your opinions 13 in this case? 14 A. No. 15 Q. Did you make any assumptions in 16 forming your opinions in this case? 17 A. I'm not sure I understand that 18 question. 19 Q. Well, regardless if anyone 20 asked you to make any assumptions, did you in 21 fact make any assumptions in this case in 22 forming your opinions? 23 A. Out of context, I'm not sure 24 what that refers to.</p>	<p style="text-align: center;">Page 610</p> <p>1 Q. (BY MS. LUCAS) "Yes" or "no," 2 have you spoken about any non-MDL opioids 3 litigations going on in the last few years 4 with counsel for any of the opioids 5 plaintiffs other than the MDL counsel? 6 A. Yes. 7 MS. CONROY: Objection. 8 Q. (BY MS. LUCAS) How many 9 counsel other than the MDL counsel have you 10 spoken with? 11 MS. CONROY: Objection. 12 Q. (BY MS. LUCAS) I'll cut this 13 short. Have you spoken with any of the 14 Oklahoma plaintiffs' counsel about the 15 opioids litigation? 16 A. Yes. 17 Q. Which ones? 18 A. Which ones what? What lawyer? 19 Q. Correct. 20 A. I don't remember his name. 21 Q. Have you spoken with Brad 22 Beckworth? 23 A. No. 24 Q. Reggie Whitten?</p>

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	<p>1 A. No.</p> <p>2 Q. Any other names that you can</p> <p>3 think of that's --</p> <p>4 A. I can't remember the guy's</p> <p>5 name.</p> <p>6 Q. And did they retain you?</p> <p>7 A. No.</p> <p>8 Q. Did you ever consult for them?</p> <p>9 A. Consult. I sent them material.</p> <p>10 Q. What material did you send</p> <p>11 them?</p> <p>12 A. The two boxes of Johnson &</p> <p>13 Johnson bad acts documents that I brought</p> <p>14 here.</p> <p>15 Q. Oh, the bad acts documents that</p> <p>16 say "Johnson & Johnson bad acts"?</p> <p>17 A. Yes.</p> <p>18 Q. I saw those. You sent that box</p> <p>19 to the Oklahoma plaintiffs' counsel?</p> <p>20 A. It's two boxes. I sent I think</p> <p>21 a digital version.</p> <p>22 Q. Are any of the documents inside</p> <p>23 that box subject to a protective order?</p> <p>24 A. I don't think so.</p>	<p>1 Q. So your contention is that</p> <p>2 Janssen joined the venture in the early</p> <p>3 1980s; is that correct?</p> <p>4 A. Janssen started to sell an</p> <p>5 opioid which led to the hockey stick in part</p> <p>6 beginning in the early '80s.</p> <p>7 Q. And by "an opioid," you mean</p> <p>8 Duragesic; correct?</p> <p>9 A. Correct.</p> <p>10 Q. Was there an objective to the</p> <p>11 venture?</p> <p>12 A. Yes.</p> <p>13 Q. What was the objective of the</p> <p>14 venture in your opinion?</p> <p>15 A. Make as much money as possible.</p> <p>16 Q. Is that the only objective to</p> <p>17 the venture in your opinion?</p> <p>18 A. Yes.</p> <p>19 Q. Other than Janssen, you're also</p> <p>20 of the opinion that Johnson & Johnson was in</p> <p>21 the venture; correct?</p> <p>22 A. Correct.</p> <p>23 Q. What year did Johnson & Johnson</p> <p>24 join the venture, in your opinion?</p>
	<p style="text-align: center;">Page 612</p> <p>1 Q. Did you check?</p> <p>2 A. As far as I know, they're not.</p> <p>3 Q. You are of the opinion in this</p> <p>4 litigation, the MDL, that all the defendants</p> <p>5 in the opioids litigation, including their</p> <p>6 associated individuals and/or organizations,</p> <p>7 are in a venture where they're acting in a</p> <p>8 concerted fashion separately or together to</p> <p>9 effect a particular result; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And although Purdue was the</p> <p>12 only member of that venture in 1984 in your</p> <p>13 opinion, others joined around 1996 or '97;</p> <p>14 correct?</p> <p>15 A. No. I left out Duragesic.</p> <p>16 That was also in the early '80s. That was a</p> <p>17 Janssen product. I forgot them yesterday.</p> <p>18 Q. Oh, you forgot them yesterday.</p> <p>19 The early what?</p> <p>20 A. Early '80s.</p> <p>21 Q. The early '80s. And so would</p> <p>22 you like to amend your testimony from</p> <p>23 yesterday?</p> <p>24 A. I just did.</p>	<p style="text-align: center;">Page 614</p> <p>1 A. Well, Johnson & Johnson's</p> <p>2 responsible for Janssen. They own Janssen.</p> <p>3 So whatever Janssen did, Johnson & Johnson is</p> <p>4 now responsible for.</p> <p>5 Q. Is it your opinion that Johnson</p> <p>6 & Johnson was in the venture in the early</p> <p>7 '80s as well?</p> <p>8 A. Independently?</p> <p>9 Johnson & Johnson had a joint</p> <p>10 marketing agreement with Ultram, or Ultram</p> <p>11 with Purdue, as I recall. So whenever that</p> <p>12 dates, that would have been joining with</p> <p>13 other members of the venture to promote</p> <p>14 opioid sales.</p> <p>15 Q. So you're of the opinion that</p> <p>16 J&J did not join the venture until there was</p> <p>17 a joint marketing agreement related to</p> <p>18 Ultram; is that correct?</p> <p>19 A. No.</p> <p>20 Q. Well you said, you told me</p> <p>21 independently Johnson & Johnson had a joint</p> <p>22 marketing agreement with Ultram. Or Ultram</p> <p>23 with Purdue, as I recall.</p> <p>24 "So whenever that dates, that</p>

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<p>1 would have been joining with other members of 2 the venture to promote opioid sales."</p> <p>3 A. That's correct.</p> <p>4 Q. Then what is the date that you 5 contend Johnson & Johnson joined the venture?</p> <p>6 A. Well, Duragesic was a Janssen 7 product in the early '80s. It would have 8 been then, because Johnson & Johnson is 9 responsible for Duragesic now.</p> <p>10 Q. So you are of the opinion that 11 J&J joined in the early '80s because of 12 Janssen; correct?</p> <p>13 A. They own Janssen. Janssen 14 participated in the early '80s. Johnson & 15 Johnson is now Janssen. Or Janssen is now 16 Johnson & Johnson, yes.</p> <p>17 Q. Yes. That's a yes?</p> <p>18 A. That's a yes.</p> <p>19 Q. Thank you.</p> <p>20 Do you believe that Janssen is 21 still a member of the venture today, "yes" or 22 "no"?</p> <p>23 MS. CONROY: Objection.</p> <p>24 THE WITNESS: Yes.</p>	<p>1 A. Janssen apart from J&J?</p> <p>2 Q. Yes.</p> <p>3 A. Let's see what the list says.</p> <p>4 Q. I would like you to give me 5 that list without reference to your notes, 6 please.</p> <p>7 A. Well, that's good, but let me 8 look at my notes.</p> <p>9 MS. LUCAS: Then I'm going to 10 put on the record that Dr. Egilman is 11 incapable of telling me what Janssen's 12 medications were without looking at 13 his notes.</p> <p>14 And for the record, 15 Dr. Egilman's reading a green piece of 16 paper that looks to be a list of some 17 kind.</p> <p>18 THE WITNESS: It's a list of 19 some kind.</p> <p>20 So Janssen's got the fentanyl 21 that I mentioned, and then Nucynta and 22 Nucynta SR.</p> <p>23 And then -- so that's the 24 Janssen participants.</p>
<p style="text-align: center;">Page 616</p> <p>1 Q. (BY MS. LUCAS) Do you believe 2 that J&J is still a member of the venture 3 today, "yes" or "no"?</p> <p>4 A. Yes.</p> <p>5 Q. Other than Duragesic, do you 6 know what opioid medications Janssen has 7 manufactured?</p> <p>8 A. Well, they originally developed 9 fentanyl. That's --</p> <p>10 Q. This is a "yes" or a "no"?</p> <p>11 A. Oh, I'm sorry.</p> <p>12 Q. That's all right.</p> <p>13 A. Yes. Some of them.</p> <p>14 Q. You're a very experienced 15 expert, Dr. Egilman. And I don't have much 16 time, so unfortunately I have to ask a lot of 17 "yes" or "no" questions.</p> <p>18 MS. CONROY: Objection, move to 19 strike.</p> <p>20 Q. (BY MS. LUCAS) So you do know 21 what opioid medications Janssen has 22 manufactured. I would like a list of the 23 opioid medications that Janssen has 24 manufactured to your knowledge.</p>	<p style="text-align: center;">Page 618</p> <p>1 Q. (BY MS. LUCAS) What does "SR" 2 stand for?</p> <p>3 A. Slow release.</p> <p>4 Q. Do you know when the Duragesic 5 transdermal system was first approved for the 6 market in the United States by the FDA?</p> <p>7 A. No.</p> <p>8 Q. Do you know if Janssen 9 continues to market Duragesic in the 10 United States today?</p> <p>11 A. I believe they do.</p> <p>12 Q. Do you know when Nucynta IR was 13 first approved for market in the U.S. by the 14 FDA? And by "IR," I mean immediate release.</p> <p>15 A. No.</p> <p>16 Q. Do you know whether Janssen 17 still markets Nucynta IR?</p> <p>18 A. Did I say Nucynta ER? SR?</p> <p>19 Q. You said SR?</p> <p>20 A. It's ER.</p> <p>21 Q. Correct.</p> <p>22 A. I'm sorry. I made a mistake.</p> <p>23 Q. That's all right.</p> <p>24 A. It's extended release.</p>

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1 Q. I'll start again. 2 Do you know whether Janssen 3 still continues to market Nucynta IR today in 4 the United States? 5 A. I think so. 6 Q. Do you know whether Janssen 7 still continues to market Nucynta ER in the 8 United States today? 9 A. I think so. 10 Q. And do you know when Nucynta ER 11 was first approved for market in the 12 United States by the FDA? 13 A. No. 14 Q. Do you know Janssen's total 15 market share for all three of those opioids 16 Nucynta IR, Nucynta ER and Duragesic? 17 MS. CONROY: Objection. 18 THE WITNESS: No. 19 Q. (BY MS. LUCAS) Do you know 20 Janssen's total market share of all opioid 21 prescriptions in Summit County between 1997 22 and 2017? 23 A. I need to look at the Summit 24 County document to give you that.	1 Q. So you offered 800 -- 489 2 separate opinions in Exhibits B1 through B489 3 of your report, give or take; correct? 4 A. Take. Correct. There are a 5 few that have a lot of duplicates in them. 6 Q. Okay. So around 480 opinions 7 are in Exhibits B1 through B489; correct? 8 A. I think there's more dups of 9 that. It's probably in the 470 range. 10 Q. I'll go with that. So you 11 offered around 470 separate opinions in 12 Exhibits B1 through B489 of your report; 13 correct? 14 A. No, there's -- some of them 15 have more than one opinion. No. 16 Q. So how many total opinions do 17 you believe you've offered in those exhibits? 18 A. I don't know. 19 Q. Is it around 470, between 470 20 and 480? 21 A. I don't know. 22 Q. Is it more than 500? 23 A. I do not know. 24 Q. You have no idea?
Page 620	Page 622
1 Q. Well, unfortunately, we don't 2 have time for you to look through your 3 documents. So without looking at documents, 4 do you know Janssen's total market share of 5 all opioid prescriptions in Summit County 6 between '97 and 2017? 7 MS. CONROY: Objection. Like 8 do a memory test? 9 MS. LUCAS: Do you want to give 10 me more time? 11 MS. CONROY: The Court has 12 granted the time here. 13 MS. LUCAS: Then yes. 14 Q. (BY MS. LUCAS) So without 15 looking at your documents, do you know 16 Janssen's total market share of all opioid 17 prescriptions in Summit County between '97 18 and 2017? 19 A. No. 20 Q. Without looking at your notes, 21 do you know Janssen's total market share of 22 all opioid prescriptions in Cuyahoga County 23 between 1997 and 2017? 24 A. No.	1 A. No, I don't have -- I have an 2 idea. It's between 470, probably, and 600, I 3 would say on the high end. But you're not 4 including all of the opinions that are in the 5 preliminary sections -- some of which we just 6 went over with Purdue. 7 Q. Correct. 8 A. Which are not numbered. 9 Q. Correct. I'm interested right 10 now in only the exhibits. 11 So in B1 through B489, you've 12 offered between 470 and 600 separate 13 opinions; correct? 14 A. That's a rough estimate, yes. 15 I could be wrong. 16 Q. Of those between 470 to 600 17 opinions, around 14 of them specifically 18 mentioned either Janssen or J&J in the title; 19 correct? 20 A. I don't know. I haven't 21 counted them by company. 22 Q. Do you have any reason to 23 dispute that 14 of those opinions mentioned 24 Janssen or Johnson & Johnson?

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<p>1 A. I have no reason to agree or 2 disagree because I haven't done that count. 3 Q. Is that a no? 4 A. No, that's not a no. 5 Q. Do you have any reason to 6 dispute that there are 14 Janssen or Johnson 7 & Johnson mentions in the opinions in 8 Exhibits B1 through B489? 9 A. I have no reason to agree or 10 disagree because I haven't done that count. 11 Q. Okay. But you have no reason 12 to say differently; correct? 13 A. I have no reason to agree or 14 disagree because I have not done that count. 15 Q. Okay. 16 Now, by our count -- and I 17 understand you haven't done the count -- 18 another 42 of those opinions in Exhibits B1 19 through 489 cite Janssen documents. 20 Do you have any reason to 21 disagree with that? 22 A. I have no reason to agree or 23 disagree because I have not done that count. 24 Q. All right. So even though you</p>	<p>1 disagree. 2 Q. So you're an expert. Let's 3 assume that there are 56 opinions that 4 involve Janssen and Johnson & Johnson. 5 Can you do that? 6 A. Yes. That's a different 7 assumption from the last question. 8 Q. Correct. 9 A. You'll recall. 10 Q. So that's a yes? 11 A. That's correct. I just want to 12 make it clear that that's different from 13 mentioning documents and opinions that 14 mention the name "Janssen." 15 Q. Understood. 16 Of the 384 hours that you've 17 spent on this case, do you know how much time 18 you've spent reviewing Janssen and Johnson & 19 Johnson evidence? "Yes" or "no"?</p>
<p>1 haven't counted, you don't have any reason to 2 agree or disagree that there are 14 opinions 3 that mention Janssen or J&J in the title and 4 another 42 that cite documents from Janssen; 5 correct? 6 A. No. 7 Q. Do you have any reason to 8 dispute that a total of 56 of your opinions 9 involve Janssen or Johnson & Johnson either 10 by name or by document? 11 A. Yes. 12 Q. Why is that? 13 Strike that. 14 How many opinions in your 15 report do you think mention J&J or Janssen by 16 name, or cite their documents? 17 Your best estimate. 18 A. I do not know. 19 Q. You have no idea? 20 A. I have not done that count. 21 Q. Would you dispute it if I said 22 56? "Yes" or "no." 23 A. Same answer. I have not done 24 the count. I have no reason to agree or</p>	<p>1 A. No. 2 Q. Are you able to give an 3 estimate of how many Janssen or J&J documents 4 you've read in the 384 hours you've spent on 5 this case? 6 A. No. 7 Q. Do you think you've reviewed 8 over 100 documents? 9 A. Yes. 10 Q. Do you think you've reviewed 11 over 100 Janssen and Johnson & Johnson 12 documents? 13 A. Yes. 14 Q. Do you think you've reviewed 15 over 1,000 Janssen and Johnson & Johnson 16 documents? 17 A. Yes. 18 Q. Do you think you've reviewed 19 over 10,000 Janssen and Johnson & Johnson 20 documents? 21 A. Not individually, but by 22 search, yes. 23 Q. So somewhere between 1,000 and 24 10,000 are documents you've actually reviewed</p>

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<p>1 that were produced by Janssen and Johnson & 2 Johnson; correct?</p> <p>3 MS. CONROY: Objection.</p> <p>4 MS. LUCAS: You can answer.</p> <p>5 THE WITNESS: Yes, as described 6 above.</p> <p>7 Q. (BY MS. LUCAS) So let's talk 8 about a couple of these opinions. And we do 9 not have time to go through all 56 because my 10 colleagues here would come after me with 11 pitchforks. So let's turn first to --</p> <p>12 A. I'm sure they're not that mean.</p> <p>13 Q. I don't know. They have a lot 14 of questions.</p> <p>15 Let's turn to what I'm going to 16 mark as Exhibit 36.</p> <p>17 (Whereupon, Deposition Exhibit 18 Egilman 36, Opinion-Around 1997, 19 "Venture" members Ortho-McNeil 20 (Johnson & Johnson) and Purdue began 21 co-promoting Ultram SR, intended for 22 the use of more moderate pain, was 23 marked for identification.)</p> <p>24 Q. (BY MS. LUCAS) This is opinion</p>	<p>1 know today whether the Court has ruled that 2 Ultram is or is not at issue in this 3 litigation?</p> <p>4 A. I do not know.</p> <p>5 MS. CONROY: Objection.</p> <p>6 Q. (BY MS. LUCAS) You do not know. 7 If the Court had ruled that Ultram is not at 8 issue in this litigation, would this change 9 your opinion at all?</p> <p>10 A. This opinion? No.</p> <p>11 Q. Not at all? Even when 12 confronted with evidence that something in 13 your opinion is simply not at issue, you're 14 not going to change the opinion?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Now before we move on -- 17 keep that with you real quick. The two 18 documents that you cite are two Purdue 19 documents; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. One is PKY181320029?</p> <p>22 A. Yes.</p> <p>23 Q. And the other is PKY183033731; 24 correct?</p>
<p>1 B397. "Opinion. Around 1997 Venture members 2 Ortho-McNeil, parenthesis, Johnson & Johnson, 3 and Purdue began co-promoting Ultram SR, 4 intended for the use of more moderate pain." 5 Did I read that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. And this is your opinion; 8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Ultram is the brand name for 11 tramadol; correct?</p> <p>12 A. Yes.</p> <p>13 Q. This opinion relates to Ultram; 14 is that right?</p> <p>15 A. In part.</p> <p>16 Q. In part?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know whether Ultram is 19 at issue in this litigation?</p> <p>20 A. I'm not sure I understand that 21 question. Do you mean is it one of the named 22 drugs in the complaint? Is that the 23 question?</p> <p>24 Q. No. I want to know, do you</p>	<p>1 A. Yes.</p> <p>2 MS. LUCAS: Mark those as 37 3 and 38.</p> <p>4 Q. (BY MS. LUCAS) Now, I don't 5 want you to take all of your time reading 6 these documents because we don't have time, 7 but have you read these documents in coming 8 to your opinions?</p> <p>9 A. Yes.</p> <p>10 (Whereupon, Deposition Exhibit 11 Egilman 37, Non-Malignant Pain 12 Consensus Guidelines, PKY181320029- 13 181320030, was marked for 14 identification.)</p> <p>15 (Whereupon, Deposition Exhibit 16 Egilman 38, Purdue Pharma, L.P., 17 Proposal, 8-26-98, PKY183033731- 18 183033736, was marked for 19 identification.)</p> <p>20 Q. (BY MS. LUCAS) Do you know 21 whether either Exhibits 37 or 38 says 22 anything about Ortho-McNeil?</p> <p>23 A. Not without reading the 24 documents.</p>

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<p>1 Q. You would have to read the 2 document to tell me?</p> <p>3 A. Yes.</p> <p>4 Q. And you can't tell me where in 5 the document Johnson & Johnson is mentioned?</p> <p>6 A. Correct -- without reading 7 them? Correct.</p> <p>8 Q. I've read these documents, and 9 I can't find Ortho-McNeil or Johnson & 10 Johnson in either one of them.</p> <p>11 Did you intend to base your 12 opinion about Johnson & Johnson on a document 13 that didn't mention J&J? "Yes" or "no."</p> <p>14 A. I need to read the documents to 15 answer the question.</p> <p>16 Q. Well, did you -- would you 17 intend to base an opinion about J&J on a 18 document that has nothing to do with J&J?</p> <p>19 MS. CONROY: Objection.</p> <p>20 THE WITNESS: Oh, no.</p> <p>21 Q. (BY MS. LUCAS) And would you 22 intend --</p> <p>23 A. Well, actually, nothing to do 24 with J&J? Correct. No, I wouldn't do that.</p>	<p>1 (Whereupon, Deposition Exhibit 2 Egilman 39, Exhibit B.77, David S. 3 Egilman Report Opiate Litigation, was 4 marked for identification.)</p> <p>5 Q. (BY MS. LUCAS) "Yes" or "no." 6 Do you know what the pain coalition was?</p> <p>7 A. Yes.</p> <p>8 Q. And your opinion in No. 77, 9 Exhibit 39, is based on this Janssen Bates 10 number that's cited; correct?</p> <p>11 A. Yes.</p> <p>12 Q. "Yes" or "no," do you know 13 which Janssen employees were involved in the 14 pain coalition?</p> <p>15 A. Not without looking at the 16 documents.</p> <p>17 Q. Did you read any depositions in 18 forming this opinion? "Yes" or "no"?</p> <p>19 A. No.</p> <p>20 Q. Do you know whether any of the 21 programs mentioned in the pain coalition 22 documents were actually launched to the 23 public?</p> <p>24 A. Yes.</p>
<p style="text-align: center;">Page 632</p> <p>1 Q. And would you intend to base 2 your opinion on documents that don't mention 3 Ultram if your opinion is about Ultram?</p> <p>4 A. Depends on the context.</p> <p>5 Q. Well, I've read these 6 documents, and I can't find Ultram either.</p> <p>7 So would you intend to base an 8 opinion about Ultram on documents that don't 9 mention it?</p> <p>10 A. Depends on the context.</p> <p>11 Obviously in this case, yes.</p> <p>12 Q. Yes. Okay.</p> <p>13 All right. I want to mark as 14 39, your opinion No. 77. B77.</p> <p>15 "Opinion. Janssen targeted 16 youth and athletes. Johnson & Johnson was 17 part of pain coalition with Janssen that 18 targeted youth. Pain is not a disease. 19 Johnson & Johnson and Janssen engaged in 20 actions targeted at directly influencing 21 potential patients and children."</p> <p>22 Is that your opinion, 23 Dr. Egilman?</p> <p>24 A. Yes.</p>	<p style="text-align: center;">Page 634</p> <p>1 Q. You do? Do you know if any of 2 the youth programs mentioned in the pain 3 coalition documents were actually launched to 4 the public?</p> <p>5 A. Yes.</p> <p>6 Q. Do you believe that they were 7 launched?</p> <p>8 A. Yes.</p> <p>9 Q. What's the basis for that 10 belief?</p> <p>11 A. There's e-mails back and forth 12 about a nurse who was conducting the training 13 in elementary schools, getting more 14 wristbands to promote the program with 15 elementary school kids.</p> <p>16 Q. Are you sure about that?</p> <p>17 A. I think so.</p> <p>18 Q. Why isn't that document cited 19 here, Dr. Egilman?</p> <p>20 A. I don't know.</p> <p>21 Q. Strike that.</p> <p>22 That document is not cited 23 there, is it?</p> <p>24 A. Correct.</p>

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<p>1 Q. Do you know of any other youth 2 programs that Janssen or Johnson & Johnson 3 launched targeting youth? 4 A. Besides this one? No. 5 Q. You're not aware of any other 6 programs targeting youth that actually 7 launched; correct? 8 MS. CONROY: Objection. 9 THE WITNESS: With respect to 10 pain, you're talking? 11 Q. (BY MS. LUCAS) With respect to 12 prescription medication or opioids. 13 MS. CONROY: Objection. 14 THE WITNESS: That's correct. 15 Q. (BY MS. LUCAS) Have you ever 16 heard of Smart Moves, Smart Choices? 17 A. No. 18 Q. Never heard of it? 19 A. Correct. 20 Q. Are you aware that Janssen 21 partnered with the National Association of 22 School Nurses to launch a program called 23 Smart Moves, Smart Choices? "Yes" or "no"? 24 A. I know there were nurses giving</p>	<p>1 Does that sound like something 2 you would dispute? 3 A. Yes. 4 Q. Do you think there was more? 5 "Yes" or "no"? 6 A. Yes, I think there's more. 7 Q. How many more do you think 8 there are? 9 A. I do not know. 10 Q. Do you think there's more than 11 300? 12 A. Yes. 13 Q. Do you think there's more than 14 a thousand? 15 A. Probably. 16 Q. In Exhibits B1 through B489; 17 correct? 18 A. And the attached materials, 19 yes. 20 Q. All right. If I'm right, and 21 there's only 274, you found those documents 22 by running search terms listed in Exhibit D 23 to your report; correct? 24 A. No.</p>
<p>1 talks. Paid for by Janssen. I don't 2 remember the name of the program. 3 Q. Are you aware that Smart Moves, 4 Smart Choices involved a program with nurses 5 where the point was to warn kids about the 6 dangers of opioids and other prescription 7 drugs, "yes" or "no"? 8 A. No. 9 Q. Are you aware that that program 10 was so popular with nurses, parents, and 11 educators, and schools that it continued for 12 six years and the website is still up today? 13 "Yes" or "no"? 14 A. No. 15 Q. Now, of all of the opinions 16 that you have that involve Janssen or Johnson 17 & Johnson, we counted up the documents that 18 you cited as the basis for your opinions. Do 19 you know how many documents you cited as the 20 basis for your opinions against Janssen and 21 J&J? 22 A. No. 23 Q. We came up with 274 in 24 Exhibits B1 through B489.</p>	<p>1 Q. Let me rephrase that. 2 You found documents by running 3 the search terms in Exhibit D and that you 4 talked about yesterday across the documents 5 listed in Exhibit D. 6 Oh, strike that. 7 You found documents by running 8 search terms across the documents located and 9 listed in Exhibit D; correct? 10 Exhibit D are the documents 11 that you searched; right? 12 A. I don't think -- what's 13 Exhibit D? 14 Q. The documents that you 15 searched. 16 A. No, the documents I searched is 17 the entire database. I don't think that's -- 18 Q. Oh, the entire -- so you 19 searched the entire database. Everything; 20 right? 21 A. That's what the searches were 22 run on. 23 Q. Got it. 24 So if you've searched the</p>

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<p>1 entire Janssen production, that's over 2 700,000 documents. Do you have any reason to 3 dispute that?</p> <p>4 A. No. I didn't do that count 5 either.</p> <p>6 Q. You wanted your searches to be 7 accurate; correct?</p> <p>8 MS. CONROY: Objection.</p> <p>9 THE WITNESS: Correct.</p> <p>10 Q. (BY MS. LUCAS) You wanted your 11 searches to be comprehensive; correct?</p> <p>12 A. I wanted them to be relevant 13 more than comprehensive.</p> <p>14 Q. You wanted your searches to be 15 relevant; correct?</p> <p>16 A. Yes.</p> <p>17 Q. You didn't want to cherry-pick 18 anything for your opinions; correct?</p> <p>19 A. Correct.</p> <p>20 Q. So if you're citing 274 21 documents out of over 700,000, are you aware 22 that that's 0.048 percent of the documents in 23 Janssen's database?</p> <p>24 A. No.</p>	<p>1 EXAMINATION 2 BY MS. NAKAMURA: 3 Q. Good afternoon, Dr. Egilman. 4 My name is Angel Nakamura, and I represent 5 the Endo and Parr defendants in this case. 6 In reviewing your opinions in 7 detail, particularly over the last couple of 8 days, I see that your report doesn't include 9 any specific opinions regarding Parr 10 Pharmaceuticals; is that right?</p> <p>11 A. I think there's some Endo 12 opinions.</p> <p>13 Q. Correct. There are no specific 14 opinions to Parr; correct?</p> <p>15 A. Not that I can recall.</p> <p>16 Q. You don't cite any documents or 17 refer to documents that are specific to the 18 Parr defendant; correct?</p> <p>19 A. Apart from the Endo documents, 20 correct.</p> <p>21 Q. And you're not offering any 22 opinions regarding Parr Pharmaceuticals in 23 this action; is that right?</p> <p>24 MS. CONROY: Objection.</p>
<p>1 Q. And are you aware that your 2 opinions do not cite 99.9 percent of 3 Janssen's documents?</p> <p>4 A. No.</p> <p>5 Q. And if given the chance, are 6 you going to sit down in the witness chair 7 and take an oath to tell the truth and tell 8 the jury that you haven't taken anything out 9 of context as to Janssen or Johnson & 10 Johnson? Is that what you will do?</p> <p>11 A. I don't think I'm going to be 12 answering that question unless you ask it.</p> <p>13 And if you ask it, I had no 14 intent to take anything out of context.</p> <p>15 MS. LUCAS: Thank you. I have 16 no more questions.</p> <p>17 THE VIDEOGRAPHER: Off the 18 record at 1:52.</p> <p>19 (Recess taken, 1:53 p.m. to 20 1:53 p.m.)</p> <p>21 THE VIDEOGRAPHER: We are back 22 on the record at 1:53 p.m.</p> <p>23 * * *</p> <p>24 * * *</p>	<p>1 Page 640</p> <p>1 THE WITNESS: I think any 2 opinions that relate to Endo relate to 3 Parr.</p> <p>4 Q. (BY MS. NAKAMURA) You don't 5 see Parr as a separate entity from Endo?</p> <p>6 A. I'm not -- to the extent that 7 Endo and --</p> <p>8 I'm not making any 9 determinations about who the proper defendant 10 is. So my opinions relate to the drug and 11 what was done with the drug. Somebody else 12 is going to have to figure out who was 13 responsible for that activity at different 14 points of time.</p> <p>15 Q. Does your opinion refer to any 16 Parr Pharmaceutical documents?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Your report and supporting 19 documents reference the Endo products 20 Opana ER and Percocet; is that right?</p> <p>21 A. Correct.</p> <p>22 Q. And your opinions don't relate 23 to any other Endo opioid products?</p> <p>24 A. Let's see.</p>

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<p>1 Q. Let me just ask.</p> <p>2 A. I think that's not correct.</p> <p>3 Q. Do you intend to offer any</p> <p>4 opinions about any other Endo products other</p> <p>5 than Opana and Percocet?</p> <p>6 A. The opinions that I have on --</p> <p>7 probably by inference, yes.</p> <p>8 Q. What does that mean, "probably</p> <p>9 by inference"?</p> <p>10 A. My mic just fell.</p> <p>11 Q. Let me ask you a different</p> <p>12 question, Dr. Egilman.</p> <p>13 Does your expert report include</p> <p>14 any opinions on products other than Opana and</p> <p>15 Percocet with respect to Endo?</p> <p>16 A. Yes. There are opinions with</p> <p>17 respect to --</p> <p>18 Yes. Sorry.</p> <p>19 Q. And you were saying which</p> <p>20 other -- which other Endo opioid products are</p> <p>21 referenced in your expert report?</p> <p>22 A. Well, there are references to</p> <p>23 hydromorphone, and oxycodone in the report.</p> <p>24 Q. And do you have any expert</p>	<p>1 the Endo sales representatives?</p> <p>2 A. Not from a representative, no.</p> <p>3 Q. Have you ever been detailed by</p> <p>4 an Endo sales representative?</p> <p>5 A. Not that I can recall.</p> <p>6 Q. Do you recall ever speaking</p> <p>7 with any representative of Endo and telling</p> <p>8 them that their promotion or marketing</p> <p>9 practices were false and misleading?</p> <p>10 A. No.</p> <p>11 Q. You have not interviewed or</p> <p>12 surveyed prescribers to determine whether any</p> <p>13 doctor received or relied upon marketing</p> <p>14 materials by Endo regarding its opioid</p> <p>15 products; correct?</p> <p>16 A. Correct.</p> <p>17 Q. So you can't identify any</p> <p>18 specific prescriber who wrote an improper</p> <p>19 opioid prescription based on Endo's conduct?</p> <p>20 A. No, that's not correct.</p> <p>21 Q. Can you clarify that answer,</p> <p>22 please?</p> <p>23 A. Sure.</p> <p>24 Q. What do you mean? Can you --</p>
<p style="text-align: center;">Page 644</p> <p>1 opinions regarding hydromorphone and</p> <p>2 oxycodone?</p> <p>3 A. Yes. I think they're in the</p> <p>4 report.</p> <p>5 Q. Have you ever prescribed</p> <p>6 Opana ER?</p> <p>7 A. No.</p> <p>8 Q. Have you ever prescribed</p> <p>9 Percocet?</p> <p>10 A. Percocet? Yes, I think I've</p> <p>11 used Percocet.</p> <p>12 Q. Do you continue to prescribe</p> <p>13 Percocet?</p> <p>14 A. No.</p> <p>15 Q. Do you recall the last time you</p> <p>16 prescribed Percocet?</p> <p>17 A. If you look at the IMS data, I</p> <p>18 think it's there.</p> <p>19 Q. Sitting here today, do you</p> <p>20 recall the last time you prescribed Percocet?</p> <p>21 A. No. You'd have to go to the</p> <p>22 IMS sheets.</p> <p>23 Q. And did you prescribe Percocet</p> <p>24 based on any marketing that you received from</p>	<p>1 are you able to identify any specific</p> <p>2 prescriber who wrote an improper opioid</p> <p>3 prescription based on Endo's conduct?</p> <p>4 A. I think so.</p> <p>5 Q. Who is that?</p> <p>6 A. I don't have the name.</p> <p>7 Q. You don't have a specific</p> <p>8 reference to a doctor?</p> <p>9 A. I don't remember the name. I'm</p> <p>10 not sure if I have a name. I may have a</p> <p>11 reference to a physician, per se, in these</p> <p>12 counties.</p> <p>13 Q. And what is the reference to</p> <p>14 the physician?</p> <p>15 A. Well, that would be in the call</p> <p>16 notes. If they were in call notes that</p> <p>17 relate to and describe that activity, then</p> <p>18 I'd have evidence.</p> <p>19 And I have them somewhere in</p> <p>20 the call notes in that pile.</p> <p>21 Q. Sitting here today, can you</p> <p>22 think of or recall a call note that gave you</p> <p>23 any indication that a physician adjusted his</p> <p>24 prescription practices based on Endo</p>

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<p>1 marketing?</p> <p>2 A. No, I can't remember a</p> <p>3 particular instance as I sit here today.</p> <p>4 Q. And you stated earlier you</p> <p>5 haven't interviewed or surveyed any patients</p> <p>6 to determine whether anyone has received a</p> <p>7 medically unnecessary opioid prescription as</p> <p>8 a result of Endo's conduct; correct?</p> <p>9 MS. CONROY: Objection.</p> <p>10 THE WITNESS: That's correct.</p> <p>11 Q. (BY MS. NAKAMURA) So you can't</p> <p>12 identify any specific patient who received an</p> <p>13 improper prescription based on Endo's</p> <p>14 conduct; correct?</p> <p>15 A. No. Not necessarily.</p> <p>16 Q. And what does that mean? Can</p> <p>17 you -- can you identify a specific patient</p> <p>18 who received an improper prescription based</p> <p>19 on Endo's conduct?</p> <p>20 A. There's two questions there.</p> <p>21 Which one do you want answered?</p> <p>22 Q. Are you able to identify any</p> <p>23 specific patient sitting here today who</p> <p>24 received an improper prescription based on</p>	<p>1 come out and said, "We're no longer going to</p> <p>2 sell oxycodone," for example, "or Opana ER</p> <p>3 because doctors are overprescribing, the</p> <p>4 drugs are being diverted, there's an opioid</p> <p>5 epidemic that our drugs are contributing to</p> <p>6 and that the whole industry's drugs are</p> <p>7 contributing to," then that would have</p> <p>8 impacted on the opioid epidemic in these two</p> <p>9 counties and in the United States.</p> <p>10 Q. You can't say that a patient</p> <p>11 would not have received a prescription for</p> <p>12 another opioid medication if Endo had not</p> <p>13 manufactured or marketed its opioid, could</p> <p>14 you?</p> <p>15 A. If they withdrew it for the</p> <p>16 reason I said, and said what I said, then</p> <p>17 some patients would not have gotten these</p> <p>18 opioids.</p> <p>19 Q. And what's your opinion on how</p> <p>20 the crisis would look different if Endo had</p> <p>21 not marketed its opioid products?</p> <p>22 A. If they had not marketed and</p> <p>23 explained the reason for not marketing the</p> <p>24 way I just described it, then that would have</p>
Page 648	Page 650
<p>1 Endo's conduct?</p> <p>2 A. Not by name.</p> <p>3 Q. Is that a "no"?</p> <p>4 A. No, it's a "not by name."</p> <p>5 THE VIDEOGRAPHER: I apologize.</p> <p>6 Can we go off the record for a second?</p> <p>7 Going off the record at</p> <p>8 2 o'clock p.m.</p> <p>9 (Recess taken, 2:00 p.m. to</p> <p>10 2:01 p.m.)</p> <p>11 THE VIDEOGRAPHER: We are back</p> <p>12 on the record at 2:01 p.m.</p> <p>13 Q. (BY MS. NAKAMURA) Are you able</p> <p>14 to identify, Dr. Egilman, any specific</p> <p>15 patient who received an improper prescription</p> <p>16 based on Endo's comment?</p> <p>17 A. No, not by name.</p> <p>18 Q. You can't say that the opioid</p> <p>19 crisis in Summit and Cuyahoga counties would</p> <p>20 look any different if Endo had not marketed</p> <p>21 or sold opioids; correct?</p> <p>22 A. No, not necessarily.</p> <p>23 Q. What does that mean?</p> <p>24 A. Well, that means if Endo had</p>	<p>1 significantly decreased the number of</p> <p>2 prescriptions given, the amount of diverted</p> <p>3 prescriptions, and it would have cut the</p> <p>4 hockey stick off.</p> <p>5 Q. Can you quantify what you mean</p> <p>6 by "significantly decreased"?</p> <p>7 A. Depends how strong that they</p> <p>8 said what they said. But if they said what I</p> <p>9 said and it was a statement against interest</p> <p>10 by an opioid manufacturer, it would have gone</p> <p>11 right back to where it was in 1996.</p> <p>12 Q. If Endo had stopped marketing</p> <p>13 its opioid products?</p> <p>14 A. Not just stopped marketing. If</p> <p>15 they'd given the reason for stop marketing or</p> <p>16 the reason that I gave, it would have knocked</p> <p>17 the hockey stick off.</p> <p>18 Q. Have you done any analysis to</p> <p>19 determine what portion of the epidemic was</p> <p>20 caused by Endo?</p> <p>21 MS. CONROY: Objection.</p> <p>22 THE WITNESS: Yes.</p> <p>23 Q. (BY MS. NAKAMURA) What have</p> <p>24 you done?</p>

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<p>1 A. All of it. Everybody's 2 responsible for all of it. Everybody's 3 equally responsible.</p> <p>4 Q. Everyone is equally 5 responsible? Is there any attribution to 6 Endo that you would have -- excuse me, strike 7 that.</p> <p>8 Are you able to tell me what 9 portion of the opioid crisis was caused by 10 Endo?</p> <p>11 A. Everybody is equally 12 responsible. It's the bank robbery. 13 Somebody's outside watching for the cops. 14 Somebody's inside with the gun. Everybody is 15 equally responsible for the community being 16 harmed.</p> <p>17 Q. Would you mind turning to 18 page 82 of your report and taking a look at 19 opinion 7.136?</p> <p>20 A. Got it.</p> <p>21 Q. And that opinion states that 22 "Endo sought to influence formulary decisions 23 by finding people to influence"; correct?</p> <p>24 A. Correct.</p>	<p>1 testimony in support of this opinion? 2 A. Correct. 3 Q. And you don't set forth the 4 original question that you sought to answer; 5 right?</p> <p>6 MS. CONROY: Objection.</p> <p>7 THE WITNESS: Well, you can add 8 a "did" to the beginning and that's 9 the question.</p> <p>10 Q. (BY MS. NAKAMURA) Right. But 11 that isn't in -- anywhere in your expert 12 report; correct?</p> <p>13 A. There's no "did" in front of 14 the opinion, that's correct.</p> <p>15 Q. Let's take a look at the first 16 sentence of the e-mail which states "Marc, if 17 you have a clinical contact at VA who 18 influences formulary decisions, best if 19 they're a member of the formulary committee. 20 I'd be happy to provide a presentation on the 21 economic value of OP ER versus oxy." 22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. You don't have any information</p>
<p style="text-align: center;">Page 652</p> <p>1 Q. And in support of your opinion, 2 you rely on one cited document; is that 3 right?</p> <p>4 A. I need to look at 136 to answer 5 that question.</p> <p>6 (Whereupon, Deposition Exhibit 7 Egilman 40, Exhibit B.136, David S. 8 Egilman Report Opiate Litigation, was 9 marked for identification.)</p> <p>10 Q. (BY MS. NAKAMURA) And in this 11 e-mail -- or in this exhibit, I'm sorry, you 12 pasted an internal Endo e-mail; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And other than this e-mail, you 15 cite to no other documents in support of this 16 opinion; right?</p> <p>17 A. Not in this opinion, that's 18 correct.</p> <p>19 Q. Do you cite to -- 20 Okay. Scratch that.</p> <p>21 You don't list any interviews 22 that support this opinion; right?</p> <p>23 A. No.</p> <p>24 Q. You don't cite any deposition</p>	<p style="text-align: center;">Page 654</p> <p>1 on whether Endo ever identified a contact on 2 the VA formulary committee, do you?</p> <p>3 A. Correct.</p> <p>4 Q. And you don't know whether Endo 5 actually communicated with anyone on the VA 6 formulary committee; correct?</p> <p>7 A. Correct.</p> <p>8 Q. And you actually haven't 9 reviewed the presentation that's referenced 10 in this e-mail, have you?</p> <p>11 A. Couldn't find it.</p> <p>12 Q. Okay. And you don't know 13 whether anyone on the VA formulary committee 14 took any action based on the information 15 received?</p> <p>16 A. Correct.</p> <p>17 Q. Let's take a look at 18 opinion 7.137, please.</p> <p>19 It's also still on page 82 of 20 your report.</p> <p>21 (Whereupon, Deposition Exhibit 22 Egilman 41, Opinion-ENDO was either 23 too cheap to add its opioid labels to 24 the 2014 PDR or completely</p>

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<p>1 irresponsible for this failure to warn 2 doctors of any data concerning these 3 dangerous drugs, was marked for 4 identification.)</p> <p>5 Q. (BY MS. NAKAMURA) And this 6 opinion states: "Endo was either too cheap 7 to add its opioid labels to the 2014 PDR or 8 completely irresponsible for this failure to 9 warn doctors of any data concerning these 10 dangerous drugs"; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And in support of this opinion, 13 you cite the information contained in 14 Exhibit B137; right?</p> <p>15 A. Correct.</p> <p>16 Q. And again, that's your only 17 citation?</p> <p>18 A. Well, I cite the PDR. It's not 19 in the PDR.</p> <p>20 Q. Correct. But in this opinion, 21 you -- your resource and your source for the 22 opinion is B.137; correct?</p> <p>23 A. Well, plus the PDR. That's in 24 the opinion.</p>	<p>1 would be included in the 2014 PDR?</p> <p>2 A. No.</p> <p>3 Q. The PDR is a compendium of 4 FDA-approved labels for pharmaceutical 5 products; right?</p> <p>6 A. Plus more, but yes.</p> <p>7 Q. It contains --</p> <p>8 A. It also includes pictures of 9 the drugs and a variety of other information.</p> <p>10 Q. Thank you. So it contains copies of 11 FDA-approved product labeling?</p> <p>12 A. Correct.</p> <p>13 Q. And those labels are actually 14 found on the products themselves; correct?</p> <p>15 A. Well, they're passed out to the 16 patient when the patient gets the drug.</p> <p>17 Q. Right. As part of the package 18 insert?</p> <p>19 A. Right. It's usually 4 to 20 6-point type, yes.</p> <p>21 Q. And the product labeling and 22 the package insert is also available on the 23 FDA's website; right?</p>
<p style="text-align: center;">Page 656</p> <p>1 Q. Right. 2 You don't list any other 3 documents?</p> <p>4 A. Aside from the PDR and what you 5 see, that's correct.</p> <p>6 Q. B137 contains two excerpts of 7 Endo's budgets; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And other than those two budget 10 examples and the PDR, you don't rely on any 11 other documents in support of this opinion?</p> <p>12 A. Correct.</p> <p>13 Q. You don't list interviews?</p> <p>14 A. Correct.</p> <p>15 Q. You don't cite deposition 16 testimony?</p> <p>17 A. Correct.</p> <p>18 Q. And you don't set forth the 19 criteria you used to choose this document?</p> <p>20 A. Correct.</p> <p>21 MS. CONROY: Objection.</p> <p>22 Q. (BY MS. NAKAMURA) Have you 23 ever reviewed any internal Endo 24 communications discussing whether Opana ER</p>	<p style="text-align: center;">Page 658</p> <p>1 A. It is now. I'm not sure when 2 it first became available on the FDA web 3 site.</p> <p>4 Q. And there's no requirement that 5 a manufacturer submit its product label for 6 inclusion in the PDR; correct?</p> <p>7 A. A label requirement?</p> <p>8 Q. An FDA requirement.</p> <p>9 A. I don't think so.</p> <p>10 Q. There's no legal requirement 11 either that a manufacturer submit its label 12 for inclusion in the PDR; correct?</p> <p>13 A. Do you mean statutory?</p> <p>14 Q. Yes.</p> <p>15 A. Correct. There's no statute 16 that says you have to do that.</p> <p>17 Q. Other than the PDR, a physician 18 can obtain the product labeling through other 19 sources; right?</p> <p>20 MS. CONROY: Objection.</p> <p>21 THE WITNESS: Not so easy.</p> <p>22 Q. (BY MS. NAKAMURA) It's 23 available on the FDA website as you 24 previously testified?</p>

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<p>1 MS. CONROY: Objection.</p> <p>2 THE WITNESS: I don't know when</p> <p>3 it went on. They're on the website</p> <p>4 now. I don't know if they were on the</p> <p>5 website in 2014 or not.</p> <p>6 Q. (BY MS. NAKAMURA) It's also on</p> <p>7 the product itself; correct?</p> <p>8 A. Yeah. The physician doesn't</p> <p>9 get the product. The patient gets the</p> <p>10 product.</p> <p>11 Q. It's also available on the</p> <p>12 manufacturer's website?</p> <p>13 A. I don't know. I didn't check</p> <p>14 the 2014 Endo website. May or may not have</p> <p>15 been.</p> <p>16 Q. And if it was on the Endo</p> <p>17 website, a physician would have access to it</p> <p>18 if he searched; correct?</p> <p>19 A. If he or she searched the Endo</p> <p>20 website and if it was on there, he or she</p> <p>21 probably could have found it.</p> <p>22 MS. NAKAMURA: Thank you.</p> <p>23 THE VIDEOGRAPHER: Going off</p> <p>24 the record at 2:11.</p>	<p>1 MS. CONROY: I'll give you just</p> <p>2 a minute if you tell me who you</p> <p>3 represent.</p> <p>4 MR. ERCOLE: I represent the</p> <p>5 Actavis and Teva defendants.</p> <p>6 MS. CONROY: Thank you.</p> <p>7 Q. (BY MR. ERCOLE) Sir, are you</p> <p>8 giving any opinion about any marketing by</p> <p>9 Actavis LLC?</p> <p>10 A. You know, with respect to both</p> <p>11 the previous opinion and this opinion, I'm</p> <p>12 giving opinions about the drugs and how they</p> <p>13 were marketed and not -- not who owned them</p> <p>14 at different points in time.</p> <p>15 Q. Sir, "yes" or "no." Are you</p> <p>16 giving an opinion about any marketing by</p> <p>17 Actavis LLC?</p> <p>18 A. I don't know.</p> <p>19 Q. Can you identify for me any</p> <p>20 marketing statement about opioids made by</p> <p>21 Actavis LLC in Cuyahoga County or Summit</p> <p>22 County?</p> <p>23 A. I have to look.</p> <p>24 Q. Sitting here right now, can you</p>
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<p>1 (Recess taken, 2:10 p.m. to</p> <p>2 2:12 p.m.)</p> <p>3 THE VIDEOGRAPHER: We are going</p> <p>4 back on the record at 2:13 p.m.</p> <p>5 EXAMINATION</p> <p>6 BY MR. ERCOLE:</p> <p>7 Q. Doctor, again, given the</p> <p>8 shortness of time, I'd ask that you keep your</p> <p>9 answers to "yes" or "no" unless they call for</p> <p>10 a different answer.</p> <p>11 Sir, "yes" or "no," can you</p> <p>12 identify for me -- strike that.</p> <p>13 Sir, you are not giving an</p> <p>14 opinion about any marketing by Watson</p> <p>15 Laboratories, are you?</p> <p>16 A. Correct.</p> <p>17 MS. CONROY: Can you identify</p> <p>18 yourself and who you represent.</p> <p>19 MR. ERCOLE: Bryan Ercole from</p> <p>20 Morgan Lewis.</p> <p>21 MS. CONROY: Who do you</p> <p>22 represent?</p> <p>23 MR. ERCOLE: You're taking up</p> <p>24 time. Do you want to cut this off?</p>	<p>1 identify for me any marketing statement about</p> <p>2 opioids made by Actavis LLC in Cuyahoga</p> <p>3 County or Summit County?</p> <p>4 MS. CONROY: By memory?</p> <p>5 THE WITNESS: Sitting here</p> <p>6 right now, I have to look at the</p> <p>7 marketing materials that relate to the</p> <p>8 products that Teva was selling, Actiq</p> <p>9 and Fentora, which are ones that are</p> <p>10 included in the report and see exactly</p> <p>11 who authored them. I don't remember</p> <p>12 who authored them at various points in</p> <p>13 time. So to answer that question, I</p> <p>14 have to go back and look at the</p> <p>15 documents generally by looking at the</p> <p>16 Bates numbers.</p> <p>17 Q. (BY MR. ERCOLE) Sir, I was not</p> <p>18 asking any questions about Teva. My question</p> <p>19 was about Actavis LLC. Do you know what</p> <p>20 opioid medicines, if any, they market?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. What medicines are they?</p> <p>23 Just a list of them.</p> <p>24 A. Norco, which is hydrocodone</p>

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<p>1 bitartrate and Tylenol.</p> <p>2 Q. And, sir, you're -- I'll cut</p> <p>3 you off and say that your answer is</p> <p>4 incomplete, but you're reading off of a list</p> <p>5 of drugs that you have; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. Thank you.</p> <p>8 A. So you don't want any more?</p> <p>9 Q. No, I do not want any more than</p> <p>10 that.</p> <p>11 Do you have -- sitting here</p> <p>12 today -- well, do you have a Redweld</p> <p>13 concerning Actavis?</p> <p>14 A. I think so.</p> <p>15 Q. Okay. Can you ask your team to</p> <p>16 provide that Redweld right now?</p> <p>17 A. They're not my team. They're</p> <p>18 the lawyers on the case.</p> <p>19 Q. Fair enough. Can you provide</p> <p>20 that Redweld for me?</p> <p>21 A. I'm not in control of them.</p> <p>22 Okay? So you can ask them.</p> <p>23 MR. ERCOLE: Can you provide</p> <p>24 the Redweld of Actavis documents?</p>	<p>1 MR. ERCOLE: Okay.</p> <p>2 Let me keep moving forward.</p> <p>3 Q. (BY MR. ERCOLE) Sir, sitting</p> <p>4 here today, can you identify any Summit or --</p> <p>5 Summit County or Cuyahoga County prescriber</p> <p>6 who wrote an opioid preparation because of a</p> <p>7 false or misleading statement by any Actavis</p> <p>8 entity?</p> <p>9 MS. CONROY: Objection.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 I'd have to go check the call notes.</p> <p>12 I think I have call notes by Actavis.</p> <p>13 So the answer is probably yes.</p> <p>14 Q. (BY MR. ERCOLE) You believe</p> <p>15 you have call notes concerning Actavis; is</p> <p>16 that correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Sitting here today, can</p> <p>19 you identify for me any -- the name of any</p> <p>20 prescriber?</p> <p>21 A. I don't think the names are in</p> <p>22 there, but I feel I've got an opinion on</p> <p>23 this. I think it's B7. B7's going to list</p> <p>24 the documents which I think include Actavis</p>
<p>1 MS. CONROY: What do you</p> <p>2 actually mean by "Actavis"? Do you</p> <p>3 want the opinions --</p> <p>4 If you would like the opinion</p> <p>5 numbers, if you list the opinion</p> <p>6 numbers.</p> <p>7 MR. ERCOLE: Sure. I don't</p> <p>8 want to object because we're taking up</p> <p>9 time, but you said you believe you</p> <p>10 have a Redweld Actavis document, and</p> <p>11 I'd like to see what that Redweld is.</p> <p>12 So can you please provide that Redweld</p> <p>13 to the extent one exists.</p> <p>14 MS. CONROY: And each Redweld</p> <p>15 corresponds to an opinion. So you</p> <p>16 need to provide the opinion number so</p> <p>17 out of these boxes, we can identify it</p> <p>18 and give you the Redweld.</p> <p>19 MR. ERCOLE: Okay. Well,</p> <p>20 you've done -- for other defendants</p> <p>21 you've provided entire boxes of all of</p> <p>22 the opinions there.</p> <p>23 MS. CONROY: When they have</p> <p>24 identified an opinion number.</p>	<p>1 documents that identify people who could be</p> <p>2 characterized the way you characterize them.</p> <p>3 That is, they were misled by Actavis</p> <p>4 advertising or marketing. And you need to go</p> <p>5 through that opinion and find them. I think</p> <p>6 I have them broken down by company.</p> <p>7 Q. Well, that's exactly what I've</p> <p>8 asked. You said you've broken it down by</p> <p>9 company.</p> <p>10 Sir, it's a yes-or-no answer.</p> <p>11 Sitting here right now, can you identify for</p> <p>12 me any prescriber who was in Cuyahoga or</p> <p>13 Summit County that was misled by any</p> <p>14 statement by Actavis?</p> <p>15 A. Not without looking at the</p> <p>16 Actavis exhibits that are cited in B7.</p> <p>17 Q. Okay. Thank you.</p> <p>18 Sitting here today, can you --</p> <p>19 sitting here right now, can you identify for</p> <p>20 me any prescriber in Cuyahoga or Summit</p> <p>21 County that was misled by any statement from</p> <p>22 Cephalon?</p> <p>23 A. Same answer. I have to go back</p> <p>24 to the call notes. I think there's evidence</p>
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<p>1 of that in the call notes. So I have to look 2 at the call notes by Cephalon.</p> <p>3 Q. Fair enough. And would that 4 same answer apply to Teva USA too?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Sir, do you -- you are 7 not giving an opinion on the TIRF REMS 8 program; is that correct?</p> <p>9 A. Except that they don't work.</p> <p>10 Q. Okay. That is not listed in -- 11 the TIRF REM -- do you know what a TIRF 12 medicine is?</p> <p>13 A. Yes. It's the transdermal 14 fentanyl.</p> <p>15 Q. Are you aware, sir, that before 16 a prescription can be written under the TIRF 17 REMS program, a prescriber must sign an 18 agreement with the patient stating that he or 19 she has counseled the patient about the risk, 20 benefits, and appropriate use of TIRF 21 medicines?</p> <p>22 A. That's what they're supposed to 23 do, that's right.</p> <p>24 Q. And are you aware that under</p>	<p>1 part of the organizing.</p> <p>2 Q. Fair enough. I'm going to -- 3 why don't I give you a composite exhibit of 4 documents here.</p> <p>5 I will represent to you that 6 they are documents B1, B49, B50, B94, B310, 7 B398, and B454.</p> <p>8 And by "documents," I mean the 9 Exhibits B to your report.</p> <p>10 (Whereupon, Deposition Exhibit 11 Egilman 42, B1, B49, B50, B94, B310, 12 B398, and B454, was marked for 13 identification.)</p> <p>14 MS. CONROY: And you want 15 counsel to pull those folders?</p> <p>16 THE WITNESS: I don't -- I 17 mean, if they -- I'll represent to you 18 those are the documents that were in a 19 box over there marked "Teva," and 20 these are the opinions that are 21 reflected in that box over there.</p> <p>22 So if you want to pull them, 23 you can pull them.</p> <p>24 MS. CONROY: No, we're only</p>
<p>1 the TIRF REMS program, prescribers must be 2 aware of the risks of any TIRF REM -- TIRF 3 medicine before they write a prescription for 4 one of those medicines?</p> <p>5 A. That's generally true under any 6 program, yes.</p> <p>7 Q. And are you aware under the 8 TIRF REMS program, a doctor must agree to 9 assess his or her patient for signs of misuse 10 or abuse?</p> <p>11 A. Yes.</p> <p>12 Q. You do not list any specific 13 opinions in your report about the TIRF REMS 14 program, do you?</p> <p>15 A. I think that's correct.</p> <p>16 Q. Sir, do you have a Redweld for 17 Teva that contains the opinions that you're 18 giving about Teva in this case?</p> <p>19 A. Well, I have -- I have Teva 20 opinions, and they have them in Redwelds back 21 there.</p> <p>22 Q. Okay. And are they grouped 23 together?</p> <p>24 A. I don't know. I didn't do that</p>	<p>1 going to pull them if you want them.</p> <p>2 MR. ERCOLE: I'm just going to 3 move forward with my questions.</p> <p>4 MS. CONROY: Don't pull them, 5 then.</p> <p>6 THE WITNESS: I'm going to want 7 them.</p> <p>8 MS. CONROY: You want them? 9 Then fine, we will pull them.</p> <p>10 MR. ERCOLE: If he needs them, 11 I'd like to go off the record so we're 12 not taking up time doing that.</p> <p>13 MS. CONROY: No, we're not 14 going off the record. These are 15 opinions that were provided to you 16 with the basis, and we have time -- we 17 have ourselves brought them here, and 18 if the doctor would like to refer to 19 them. You can tell him not to refer 20 to them.</p> <p>21 MR. ERCOLE: They're right in 22 front of him.</p> <p>23 MS. CONROY: No, that is not 24 the full opinion.</p>

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<p>1 MR. ERCOLE: Sure. Feel free 2 to pull the exhibits for those. 3 Q. (BY MR. ERCOLE) Sir, these are 4 Exhibits B -- the composite exhibit I showed 5 you reflect Exhibits B1, B49, B50, B94, B310, 6 B398, and B45.</p> <p>7 Excuse me, B454 of your report. 8 Do you see that?</p> <p>9 A. You said 398 and 454?</p> <p>10 Q. Yes, sir.</p> <p>11 A. That's what I've got.</p> <p>12 Q. Okay.</p> <p>13 Looking at those documents -- 14 and you refer to Teva in those documents? 15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Okay.</p> <p>18 What Teva entity are you 19 referring to?</p> <p>20 A. Well, for the first one, it 21 would be the Teva that was subject to the CIA 22 in 2010.</p> <p>23 Q. Sir, and -- do you know that 24 with respect to each of the exhibits that I</p>	<p>1 that I've given you in that composite 2 exhibit, there is no deposition testimony 3 from this case to -- that is cited in those 4 exhibits to support those opinions; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And there are no interviews of 7 prescribers or patients that have been 8 provided to support those opinions; correct?</p> <p>9 A. Do you mean by me?</p> <p>10 Q. Yes.</p> <p>11 A. Correct.</p> <p>12 Q. There is no specific written 13 narrative in connection in -- with these 14 exhibits, the composite exhibit I gave you to 15 support the opinions that you're giving; 16 correct?</p> <p>17 MS. CONROY: Objection.</p> <p>18 THE WITNESS: No.</p> <p>19 Q. (BY MR. ERCOLE) That's 20 incorrect?</p> <p>21 A. Correct.</p> <p>22 Q. Okay.</p> <p>23 You have not provided any 24 independent analysis in connection with the</p>
<p>1 provided to you, that Teva Pharmaceuticals 2 USA is not referenced in any of these -- any 3 of the documents that you have cut and pasted 4 or quoted from in connection with those 5 opinions?</p> <p>6 A. Well, I don't think that's 7 correct.</p> <p>8 Q. Okay. Do you know that all of 9 the documents referenced therein refer to 10 conduct by Cephalon as opposed to Teva 11 Pharmaceuticals?</p> <p>12 MS. CONROY: Objection.</p> <p>13 THE WITNESS: No, not exactly.</p> <p>14 Q. (BY MR. ERCOLE) Do you know 15 the relationship between Cephalon and Teva 16 Pharmaceuticals USA?</p> <p>17 A. I think Teva bought Cephalon.</p> <p>18 Q. And that's your understanding?</p> <p>19 A. They own them in some way. 20 That's my understanding based on the fact 21 that all these documents that we are 22 discussing have Teva Bates numbers on them. 23 They were produced by Teva, not Cephalon.</p> <p>24 Q. With respect to the opinions</p>	<p>1 opinions that I'm showing you linking any of 2 the conduct that is described in these 3 opinions to any prescriber in Ohio; correct?</p> <p>4 MS. CONROY: Objection.</p> <p>5 THE WITNESS: Not necessarily.</p> <p>6 Q. (BY MR. ERCOLE) Sir, have you 7 provided any written analyses, you 8 independently writing something in connection 9 with these opinions, that links any of the 10 conduct described in these opinions to any 11 opioid prescription in Ohio?</p> <p>12 MS. CONROY: Objection.</p> <p>13 Q. (BY MR. ERCOLE) I'm not asking 14 whether or not they quote documents or not. 15 Is there any narrative that you've offered 16 for these opinions linking anything, any of 17 the conduct described therein, to any opioid 18 prescription in Ohio?</p> <p>19 A. There's no narrative by me.</p> <p>20 MS. CONROY: Objection.</p> <p>21 MR. ERCOLE: Okay.</p> <p>22 Q. (BY MR. ERCOLE) And there's no 23 narrative by you --</p> <p>24 A. Hang on one second. Are you</p>

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<p>1 doing all five opinions?</p> <p>2 Q. Yes.</p> <p>3 A. Okay. Let's -- let me look at</p> <p>4 them all, then.</p> <p>5 Q. Sir, I'll withdraw the</p> <p>6 question, because we just -- in all due</p> <p>7 respect -- with all due respect, we don't</p> <p>8 have enough time for you to complete that</p> <p>9 analysis.</p> <p>10 Any --</p> <p>11 MS. CONROY: Objection, move to</p> <p>12 strike.</p> <p>13 Q. (BY MR. ERCOLE) Any opinion</p> <p>14 that you are giving -- strike that.</p> <p>15 Any of these opinions say</p> <p>16 specifically that Cephalon or Teva USA caused</p> <p>17 the opioid crisis in Ohio?</p> <p>18 MS. CONROY: Objection.</p> <p>19 THE WITNESS: Yes.</p> <p>20 Q. (BY MR. ERCOLE) Sir, do any of</p> <p>21 the opinions I just showed you expressly</p> <p>22 state that Cephalon or Teva USA caused the</p> <p>23 opioid epidemic in Ohio?</p> <p>24 MS. CONROY: Objection.</p>	<p>1 question. The titles will speak for</p> <p>2 themselves.</p> <p>3 With respect to -- let me ask</p> <p>4 this.</p> <p>5 With respect to any of the</p> <p>6 Teva, Cephalon or Actavis opinions that</p> <p>7 you're giving in this case, is there anything</p> <p>8 that would prevent a juror from reading the</p> <p>9 documents that you cite in your opinions and</p> <p>10 then reaching the same opinion?</p> <p>11 MS. CONROY: Objection.</p> <p>12 THE WITNESS: Depends on the</p> <p>13 juror.</p> <p>14 Q. (BY MR. ERCOLE) There may be</p> <p>15 some that would be able to certainly reach</p> <p>16 the same opinion?</p> <p>17 A. Certainly if there was someone</p> <p>18 with my training and expertise, they -- but</p> <p>19 they wouldn't have time to read them during</p> <p>20 the course of a short trial. So they</p> <p>21 couldn't -- they couldn't -- it would be</p> <p>22 like -- I mean, what I --</p> <p>23 They couldn't -- they wouldn't</p> <p>24 have time to read them all, and so that would</p>
<p style="text-align: center;">Page 676</p> <p>1 THE WITNESS: No.</p> <p>2 Q. (BY MR. ERCOLE) Okay. Do any</p> <p>3 of the opinions I just showed you expressly</p> <p>4 state that Cephalon or Teva USA caused any</p> <p>5 prescriber in Ohio to write an improper</p> <p>6 opioid prescription?</p> <p>7 A. No.</p> <p>8 Q. Do any of the opinions I just</p> <p>9 showed you expressly state that Cephalon or</p> <p>10 Teva USA caused any patient to be harmed by</p> <p>11 any opioid prescription in Ohio?</p> <p>12 A. Now I have to look at them.</p> <p>13 Q. Sir, I'll withdraw the</p> <p>14 question.</p> <p>15 The title of your -- none --</p> <p>16 none of the opinions that are titled say</p> <p>17 anything about Teva or Cephalon causing any</p> <p>18 patient to be harmed by any opioid</p> <p>19 prescription in Ohio; correct?</p> <p>20 A. The titles?</p> <p>21 Q. Yes.</p> <p>22 A. Correct. Well, let me look at</p> <p>23 the titles and answer.</p> <p>24 Q. Sir, I'll withdraw the</p>	<p style="text-align: center;">Page 678</p> <p>1 not be possible during a trial.</p> <p>2 I mean, if they were board</p> <p>3 certified in internal medicine with training</p> <p>4 in epidemiology and public health --</p> <p>5 Q. Sir, it was a -- it was a</p> <p>6 "yes/no" question.</p> <p>7 A. Okay. Well, depends on the</p> <p>8 juror, then.</p> <p>9 Q. Okay. And --</p> <p>10 A. And how much time they have</p> <p>11 during the trial.</p> <p>12 Q. Do you -- sir, are you -- are</p> <p>13 you aware that with respect to the opinions</p> <p>14 that you are giving as to Teva, Cephalon, any</p> <p>15 Actavis entity, that the total number of</p> <p>16 documents that you've cited in connection</p> <p>17 with those opinions is less than 30?</p> <p>18 A. I don't think that's correct.</p> <p>19 Q. Okay. So you're not aware of</p> <p>20 that, then?</p> <p>21 A. I think it's wrong.</p> <p>22 MR. ERCOLE: Okay. Great.</p> <p>23 And I'll -- just continue to</p> <p>24 note on the record that to be honest</p>

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<p>1 with you, this is absolutely 2 ridiculous that we're forced to have 3 to ask questions in the way that I did 4 concerning multiple entities. So I 5 appreciate your position on that, but 6 I just want to make it clear on the 7 record, we certainly object and 8 believe our due process rights are 9 being infringed upon.</p> <p>10 Thank you.</p> <p>11 THE VIDEOGRAPHER: Off the 12 record. 2:33.</p> <p>13 (Recess taken, 2:32 p.m. to 14 2:51 p.m.)</p> <p>15 THE VIDEOGRAPHER: We are back 16 on the record at 2:52.</p> <p>17 EXAMINATION 18 BY MR. GOLDSTEIN:</p> <p>19 Q. My name is Josh Goldstein. I 20 represent Mackenrodt LLC in this case.</p> <p>21 A. Good afternoon.</p> <p>22 Q. Now, you just testified to 23 Mr. Ercole that your opinions relate to 24 particular drugs and how they were marketed</p>	<p>1 not a lawyer or a judge.</p> <p>2 Q. Have you ever been provided 3 with a legal definition of the word 4 "venture"?</p> <p>5 A. No.</p> <p>6 Q. And what about a conspiracy? 7 Are you offering a legal opinion about 8 whether the defendants are engaged in a 9 conspiracy?</p> <p>10 A. No, I don't think -- I don't 11 use the word "conspiracy" at all.</p> <p>12 Q. And have you ever been provided 13 in connection with your work in this case a 14 legal definition of the word "conspiracy"?</p> <p>15 A. No.</p> <p>16 Q. Now, you testified earlier -- 17 I'm going to hand you what's been marked as 18 Exhibit 5 to your deposition.</p> <p>19 And that's your assignment in 20 this case; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And that assignment refers to, 23 in part, analyzing whether defendants worked 24 together and/or separately; do you see that?</p>
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<p>1 and not who owned those particular drugs. 2 Is that accurate?</p> <p>3 A. No.</p> <p>4 Q. Okay. Would you like to 5 correct your prior testimony?</p> <p>6 A. I don't think that's my prior 7 testimony.</p> <p>8 Q. Does the definition that you 9 provide of venture only apply to companies 10 and not drugs?</p> <p>11 A. No, it applies to the companies 12 I mentioned and the opioid drugs that they 13 manufacture.</p> <p>14 Q. And if those drugs are 15 manufactured by a non-defendant, they would 16 not apply to the venture?</p> <p>17 A. I don't know if they would or 18 wouldn't. I don't have documents on a 19 company that's not in the litigation.</p> <p>20 Q. Now, are you offering a legal 21 opinion of whether the defendants in this 22 litigation are engaged in a venture?</p> <p>23 A. I don't know -- if I'm offering 24 an opinion, it's not a legal opinion. I'm</p>	<p>1 A. Yes.</p> <p>2 Q. Are there any defendants who 3 worked only separately? Did not work 4 together as part of this venture?</p> <p>5 A. No.</p> <p>6 Q. So it would be fair to delete 7 the -- where you see it says "together and/or 8 separately," would it be accurate to delete 9 the "or"?</p> <p>10 A. No.</p> <p>11 Q. Are there any defendants who 12 were part of the venture but did not work in 13 concert with other defendants?</p> <p>14 A. At some point in time, no.</p> <p>15 Q. Okay.</p> <p>16 A. Let me -- I'm not sure if 17 that's a clear answer to that question.</p> <p>18 All of the members of the 19 venture at one point in time or another were 20 members of the same organization or 21 organizations that met the definition for the 22 venture.</p> <p>23 Some of them acted 24 independently. That is, they did not -- some</p>

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<p>1 of the actions that the individual venture 2 member did were done independently of the 3 venture, and I have no evidence that the 4 venture knew about what they did when they 5 did it.</p> <p>6 Q. Did you distinguish in your 7 report between when a defendant was acting 8 together versus when a defendant was acting 9 separately in furtherance of the venture?</p> <p>10 A. In some cases, it's -- I think 11 it's almost always obvious, because I'm 12 either talking about acting through 13 organizations or KOLs, or I'm talking about 14 specific things that only one company would 15 know about.</p> <p>16 Q. So that's the distinction you 17 would draw between acting together and 18 separately?</p> <p>19 A. I didn't make a distinction. I 20 said "and/or." That's not a distinction.</p> <p>21 Q. No, your testimony that you 22 just provided, that's the distinction you 23 would draw?</p> <p>24 Or strike that.</p>	<p>1 Q. So it's possible to be a 2 manufacturer of prescription opioids and not 3 be a member of the venture, putting aside the 4 fact that your term is limited to defendants?</p> <p>5 A. Anything is possible.</p> <p>6 Q. But it just so happens that all 7 of the defendants are also all members of the 8 venture?</p> <p>9 Is that right?</p> <p>10 MS. CONROY: Objection.</p> <p>11 THE WITNESS: No.</p> <p>12 Q. (BY MR. GOLDSTEIN) If you 13 turn -- I'm going to hand you what's 14 previously been marked as Exhibit 12. 15 And I want to refer you to 16 subparagraph (2). You say "They" -- they 17 being the members of the venture -- is that 18 right?</p> <p>19 A. Yes.</p> <p>20 Q. "Worked together to influence 21 public perceptions of the class of narcotic 22 drugs," and then you list "drug toxicity, 23 untreated pain and encouraged use of 24 narcotics instead of non-medication</p>
<p style="text-align: center;">Page 684</p> <p>1 That's how you -- your 2 testimony is that's how you determined or set 3 forth in your report when a defendant was 4 acting together and when a defendant was 5 acting separately?</p> <p>6 A. Well, what do you mean by 7 "That's how"?</p> <p>8 Q. I'll strike the question.</p> <p>9 You're aware that there are 10 manufacturers of opioids that are not 11 defendants in this case?</p> <p>12 A. Yes.</p> <p>13 Q. Now, putting aside the fact 14 that they're not defendants, but for that 15 fact, are they participants in the venture?</p> <p>16 A. I do not know.</p> <p>17 Q. And why is that?</p> <p>18 A. Because I haven't seen their 19 documents. I haven't seen or reviewed their 20 materials.</p> <p>21 I haven't reviewed their call 22 notes. I haven't done the things I've been 23 able to do with participants in the 24 litigation.</p>	<p style="text-align: center;">Page 686</p> <p>1 treatments or less addictive drugs."</p> <p>2 Do you see all of that?</p> <p>3 A. Yes.</p> <p>4 Q. Did all of the members of the 5 venture work together to influence public 6 perceptions of the class of narcotic drugs 7 with respect to the drug toxicity?</p> <p>8 A. All of the members of the 9 venture worked in organizations or separately 10 to minimize drug toxicity.</p> <p>11 Q. That wasn't my question. My 12 question was whether they all worked together 13 to influence public perceptions of the class 14 of narcotic drugs with respect to the drug's 15 toxicity?</p> <p>16 A. All of the members of the 17 venture worked in organizations or separately 18 to influence public perceptions of the class 19 of narcotic drugs with respect to the drug's 20 toxicity.</p> <p>21 Q. And is that true with respect 22 to untreated pain?</p> <p>23 MS. CONROY: Objection.</p> <p>24 THE WITNESS: Yes.</p>

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<p>1 Q. (BY MR. GOLDSTEIN) And same 2 for subparagraph (c)? 3 A. Yes. 4 Q. And is it your testimony that 5 your report sets forth the ways in which each 6 defendant did each of these three things? 7 2(a), (b), and (c) of Exhibit 12? 8 A. In the way that I described 9 before, yes. 10 And by that, I mean my 11 definition of "together and separately." 12 Q. Understood. 13 Now, you would agree with me 14 that there's no written explanation in your 15 report for when -- that defines when each 16 manufacturer that's a member of the venture 17 became a member of the venture. 18 A. It exists for some, probably 19 not for all. 20 Q. So just by reading your report, 21 each member of the venture could not look at 22 the report and determine when they became a 23 member of the venture? 24 A. No, they could know when they</p>	<p>1 Q. Oh. So -- 2 A. It wasn't like the Communist 3 Party. They didn't give out cards. 4 Q. So you have the data; you just 5 didn't include it in your report? 6 A. For some, I may have the data, 7 and for some, I don't have the data. 8 Q. So for some, even you have no 9 idea when the defendant became a member of 10 the venture? 11 MS. CONROY: Objection. 12 THE WITNESS: I don't know, for 13 example, when -- and I don't know if I 14 have this or not -- when Purdue first 15 became a member of the Pain Care 16 Forum, or when Endo first joined HDMA. 17 Q. (BY MR. GOLDSTEIN) That's not 18 my question. 19 A. I don't have that data. 20 Q. That's not my question. My 21 question is even you do not know when each 22 defendant that's a member of the venture 23 became a member of the venture. 24 MS. CONROY: Objection.</p>
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<p>1 were a member of the venture. But when they 2 first became a member of the venture, that -- 3 I didn't have data on that for all the 4 companies. 5 Q. You -- 6 A. So in other words, when they 7 joined the American Pain Foundation, that 8 would be a joining of the venture. Or when 9 they joined the Pain Care Forum, that would 10 be joining an activity of the venture. Or 11 when they joined an activity -- 12 Q. I think I understand your 13 testimony. 14 A. -- of JACHO -- 15 Q. I think I understand your 16 testimony. 17 A. So the answer is incomplete. 18 No problem. 19 Q. So my question -- so you said 20 you didn't have the data for each company on 21 when they became a member of the venture; 22 right? 23 A. I didn't include the data for 24 membership.</p>	<p>1 THE WITNESS: Well, I think I 2 have -- most of that information is in 3 the documents, but I certainly didn't 4 put it in the report by date. 5 Q. (BY MR. GOLDSTEIN) Okay. Do 6 you have an understanding that manufacturers 7 of prescription opioids manufacture different 8 types of prescription opioids; right? 9 A. Yes. 10 Q. And those prescription opioids 11 have different benefits and risks associated 12 with them? 13 A. No, not necessarily. 14 Q. Do they have different 15 benefits? 16 A. Some do, some don't. Some have 17 the same benefits. After all, you have some 18 generics. They all are addictive, so that's 19 the same risk. 20 Q. So the ones -- 21 A. They all work for short-term 22 pain, for some short-term pain. So there's a 23 wide range of overlap between different 24 opioids.</p>

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<p>1 Q. Is it fair to say that 2 manufacturers of prescription opioids found 3 in certain cases compete against each other 4 in manufacturing different products that they 5 bring to the market?</p> <p>6 A. Yes.</p> <p>7 Q. And if a manufacturer -- strike 8 that.</p> <p>9 Are you -- you're aware that 10 some prescription opioids are not intended to 11 be used by patients who are not already 12 taking a prescription opioid?</p> <p>13 A. Who have not developed 14 tolerance to prescription opioids. That 15 would be the TIRF REMS thing, for example.</p> <p>16 Q. In an instance where a 17 manufacturer manufactures an opioid that's 18 intended to be used by a patient who's 19 already taking a different opioid, would you 20 agree that the -- that that manufacturer is 21 not manufacturing the opioid to be used by a 22 patient who's not already taking an opioid?</p> <p>23 MS. CONROY: Objection.</p> <p>24 THE WITNESS: No.</p>	<p>1 A. Excuse me. Let me finish my 2 answer.</p> <p>3 Q. I'll strike the question.</p> <p>4 Based on the information that 5 was available to you at the time you 6 prescribed opioids, did you always ensure 7 that the benefits outweighed the risks as you 8 understood them?</p> <p>9 A. I tried to do that.</p> <p>10 Q. And in trying to do that, you 11 relied on your medical training and 12 experience; correct?</p> <p>13 A. In part.</p> <p>14 Q. And on medical research and 15 scientific studies?</p> <p>16 A. In part.</p> <p>17 Q. On CMEs?</p> <p>18 A. I don't think I had any CMEs on 19 opioids when I was prescribing.</p> <p>20 Q. Are you aware that other 21 prescribers rely on CMEs?</p> <p>22 MS. CONROY: Objection.</p> <p>23 Q. (BY MR. GOLDSTEIN) I'll strike 24 the question.</p>
<p>1 Q. (BY MR. GOLDSTEIN) Now, 2 you've --</p> <p>3 A. No, look at Insys.</p> <p>4 Q. You previously testified that 5 you prescribed opioids.</p> <p>6 Do you recall that testimony?</p> <p>7 A. Yes.</p> <p>8 Q. Before prescribing opioids, do 9 you agree that prescribers should always 10 ensure that the benefits outweigh the risks?</p> <p>11 A. When possible.</p> <p>12 It's not possible in all 13 situations.</p> <p>14 Q. Is that what you did when you 15 prescribed opioids? You always evaluated 16 whether the benefits outweighed the risks?</p> <p>17 A. No. I relied on the 18 information available to me to do that.</p> <p>19 I could not -- I could not 20 evaluate risks and benefits because the 21 companies misrepresented risks and 22 benefits --</p> <p>23 Q. I'm saying based on the 24 information --</p>	<p>1 You relied on the contents of 2 the FDA-approved label when you prescribed 3 opioids?</p> <p>4 A. Yes.</p> <p>5 Q. And when you considered the 6 risks, you considered the patient's medical 7 history?</p> <p>8 A. Yes.</p> <p>9 Q. And you considered -- strike -- 10 and when you considered the risks and 11 benefits, you considered the patient's 12 presentation based on your examination and 13 interview with that patient?</p> <p>14 A. Yes.</p> <p>15 Q. And you considered whether the 16 patient -- strike that.</p> <p>17 Are you aware that particular 18 patients have a disproportionate risk of 19 developing an opioid-related substance abuse 20 or dependence?</p> <p>21 Are some patients more likely 22 to develop a substance abuse dependence than 23 others?</p> <p>24 MS. CONROY: Objection.</p>

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<p>1 THE WITNESS: Certainly those 2 with a previous history of substance 3 abuse, yes.</p> <p>4 Q. (BY MR. GOLDSTEIN) And is that 5 something you consider when prescribing 6 opioids?</p> <p>7 MS. CONROY: Objection.</p> <p>8 THE WITNESS: Well, I tried to 9 consider that. That's something 10 patients often don't tell the truth 11 about.</p> <p>12 Q. (BY MR. GOLDSTEIN) What are 13 the factors that you would look to to 14 determine whether a patient was a particular 15 risk of developing a substance abuse disorder 16 or dependence?</p> <p>17 A. Basically whether they said 18 they'd had a substance abuse disorder in the 19 past. You asked that question. You asked 20 about the history of a use of opioids.</p> <p>21 MR. GOLDSTEIN: We can go off.</p> <p>22 THE VIDEOGRAPHER: Off the 23 record at 3:09.</p> <p>24 (Recess taken, 3:08 p.m. to</p>	<p>1 Egilman 48, as well as any documents that are 2 contained in the colored folders that were 3 marked as Group Exhibit 26 yesterday, contain 4 all of the bases for your opinions 6, 123, 5 385, 426, 444, and 480?</p> <p>6 (Whereupon, Deposition Exhibit</p> <p>7 Egilman 43, B.6 Redweld, was marked 8 for identification.)</p> <p>9 (Whereupon, Deposition Exhibit</p> <p>10 Egilman 44, B.123 Redweld, was marked 11 for identification.)</p> <p>12 (Whereupon, Deposition Exhibit</p> <p>13 Egilman 45, Tab 22, Exhibit 385, was 14 marked for identification.)</p> <p>15 (Whereupon, Deposition Exhibit</p> <p>16 Egilman 46, B.426 Redweld, was marked 17 for identification.)</p> <p>18 (Whereupon, Deposition Exhibit</p> <p>19 Egilman 47, B.444 Redweld, was marked 20 for identification.)</p> <p>21 (Whereupon, Deposition Exhibit</p> <p>22 Egilman 48, B.480 Redweld, was marked 23 for identification.)</p> <p>24 THE WITNESS: Yeah. I think</p>
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<p>1 3:10 p.m.)</p> <p>2 THE VIDEOGRAPHER: We are back 3 on the record at 3:11.</p> <p>4 EXAMINATION</p> <p>5 BY MS. WELCH:</p> <p>6 Q. Good afternoon, Dr. Egilman.</p> <p>7 My name is Donna Welch. I represent the 8 Allergan defendants.</p> <p>9 A. Good afternoon.</p> <p>10 Q. Thank you.</p> <p>11 The first thing I want to try 12 to do is fairly efficiently make sure that I 13 have a record for my client of all of the 14 documents and other material that forms the 15 bases for your opinions as they specifically 16 relate to Actavis or Allergan.</p> <p>17 I have identified opinions 6, 18 123, 385, 426, 444 and 480, as specifically 19 referring to Actavis and/or Allergan. And 20 I've had counsel pull the support materials 21 for those opinions.</p> <p>22 Am I correct, Dr. Egilman, that 23 the materials included in those exhibits, 24 which we've marked as Egilman 43 through</p>	<p>1 that's correct, but I think if you're 2 delineating it by your initial 3 prologue, it would also include B7 and 4 the Perry appendices that I mentioned 5 yesterday that I brought today.</p> <p>6 Q. (BY MS. WELCH) Thank you for 7 that.</p> <p>8 Including, then, B7 and the 9 Perry appendices that you referenced, do the 10 materials marked in Egilman 4 through 48 and 11 Egilman 26 together contain all of the bases 12 for the opinions that I just identified?</p> <p>13 A. I believe so.</p> <p>14 Q. Thank you.</p> <p>15 I am also going to hand you 16 what I've marked as Exhibit 49.</p> <p>17 Jayne, I'm going to read the 18 Bates numbers and then hand you the other 19 copy.</p> <p>20 (Whereupon, Deposition Exhibit</p> <p>21 Egilman 49, February 2010 email chain.</p> <p>22 Subj: RE: Call this Afternoon with 23 attachments, Acquired_</p> <p>24 Actavis_00367447-367452 plus 3 more</p>

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<p>1 pages, was marked for identification.)</p> <p>2 Q. (BY MS. WELCH) This is an</p> <p>3 e-mail dated 2-17-2010 that bears the Bates</p> <p>4 label 7447, and it has two attachments.</p> <p>5 Egilman 49, Dr. Egilman, I will</p> <p>6 represent was one of the documents that you</p> <p>7 identified yesterday as being contained in</p> <p>8 Group Exhibit 26.</p> <p>9 These documents reference a</p> <p>10 Kadian speaker's program; correct?</p> <p>11 A. Correct.</p> <p>12 Q. Did you do anything, one way or</p> <p>13 another, to determine if a Kadian speaker's</p> <p>14 program was ever implemented by Actavis or</p> <p>15 Allergan?</p> <p>16 A. Apart from these documents?</p> <p>17 No.</p> <p>18 Q. So you do not know, one way or</p> <p>19 another, whether a Kadian speaker's program</p> <p>20 was implemented; correct?</p> <p>21 A. No. I'd have to look at the</p> <p>22 documents.</p> <p>23 My recollection is it was one,</p> <p>24 but I'd need to look to be sure.</p>	<p>1 claimed pain was a disease, and entered into</p> <p>2 settlements and guilty pleas."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. You used the term "many bad</p> <p>6 things."</p> <p>7 Is that a term of art in your</p> <p>8 areas of expertise?</p> <p>9 A. No.</p> <p>10 Q. Is there some technical</p> <p>11 definition or meaning to "bad things" that</p> <p>12 you can explain for me?</p> <p>13 A. Sure. It would be defined by</p> <p>14 the specific examples listed in the documents</p> <p>15 that were listed below.</p> <p>16 Q. Would you agree with me that</p> <p>17 your report that has been marked by -- as an</p> <p>18 exhibit in a case does not contain any</p> <p>19 written analysis describing how you came to</p> <p>20 that opinion?</p> <p>21 MS. CONROY: Objection.</p> <p>22 THE WITNESS: Do you mean by</p> <p>23 me?</p> <p>24 Q. (BY MS. WELCH) Correct.</p>
Page 700	Page 702
<p>1 Q. I'll represent to you,</p> <p>2 Dr. Egilman, that these refer to a proposed</p> <p>3 Kadian speaker's program and a proposed</p> <p>4 budget. I just want to make sure that I</p> <p>5 understand correctly that other than these</p> <p>6 documents, you have no information to support</p> <p>7 an opinion that a Kadian speaker's program</p> <p>8 was actually ever implemented; correct?</p> <p>9 Other than these documents.</p> <p>10 A. I don't think that's correct.</p> <p>11 I have the KOL opinion, with -- which</p> <p>12 included some funding from Kadian, which --</p> <p>13 some of which, I think, went for speakers.</p> <p>14 Now, whether those speakers were under this</p> <p>15 program or another program, I don't recall.</p> <p>16 Q. I'm going to have you turn to</p> <p>17 page 129 in your report. And I want to ask</p> <p>18 you about opinion 444. 7.444.</p> <p>19 A. What page?</p> <p>20 Q. 129.</p> <p>21 A. Okay.</p> <p>22 Q. Opinion 444 says "Allergan did</p> <p>23 many bad things, such as lying about</p> <p>24 addiction, expanding the opioid market,</p>	<p>1 A. I think that's correct.</p> <p>2 Q. Would you agree with me that</p> <p>3 your report does not contain any written</p> <p>4 analysis by you explaining how the referenced</p> <p>5 or cited documents support the opinion that</p> <p>6 Allergan did many bad things?</p> <p>7 A. Correct.</p> <p>8 Q. Would you agree with me that</p> <p>9 your report does not contain any written</p> <p>10 explanation by you why you believe that those</p> <p>11 documents constitute the best evidence</p> <p>12 regarding your opinion 7.444?</p> <p>13 A. Correct.</p> <p>14 Q. What was the answerable</p> <p>15 question that was the underpinning for</p> <p>16 opinion 7.444?</p> <p>17 A. The same issue, the general --</p> <p>18 my general assignment.</p> <p>19 Q. What was the specific</p> <p>20 uncertainty that you translated to the</p> <p>21 answerable question for purposes of coming to</p> <p>22 your expert opinion 7.444?</p> <p>23 A. It's my assignment in the case.</p> <p>24 Q. The specific uncertainty and</p>

Page 703	Page 705
<p>1 the answerable question that underpin 2 opinion 7.444 are the assignment in the case 3 that you read yesterday from a piece of paper 4 and which was marked as an exhibit?</p> <p>5 A. Correct.</p> <p>6 Q. Exhibit -- I'm sorry,</p> <p>7 opinion 7.444 lists four specific things: 8 "Lying about addiction, expanding the opioid 9 market, claiming pain was a disease, and 10 entering into settlement and guilty pleas."</p> <p>11 Are there any other specific 12 things that you claim Allergan did that you 13 contend were bad things that you intend to 14 offer an opinion on?</p> <p>15 A. Sure. Because that phrase 16 starts with "such as." So there are just 17 four examples.</p> <p>18 Q. I have a limited amount of 19 time, Dr. Egilman, so I'd like you to list as 20 succinctly as you can the other bad things 21 you claim Allergan did that you intend to 22 offer an opinion on in this case?</p> <p>23 A. Well, they're going to be in 24 these documents attached.</p>	<p>1 things that Allergan -- you claim Allergan 2 did on which you intend to offer an opinion?</p> <p>3 A. Without looking at the 4 documents? No, I can't do that.</p> <p>5 Q. Okay.</p> <p>6 You cite to two settlement 7 agreements in your reference materials. Both 8 are dated 2010, and I will reference and 9 represent to you that neither of them related 10 to opioids.</p> <p>11 Are you aware of any other 12 Actavis or Allergan settlement agreements 13 that relate to opioids?</p> <p>14 A. No.</p> <p>15 Q. Are you aware of any Allergan 16 or Actavis guilty pleas?</p> <p>17 A. No.</p> <p>18 Q. During what specific time 19 period is it your opinion that the opioid 20 market was expanded?</p> <p>21 A. That's the hockey stick. So 22 that goes from 1996 to about 2016, with a 23 drop-off in 2016 because certain Class II 24 drugs were made Class III drugs.</p>
Page 704	Page 706
<p>1 Q. Can you list for me, 2 Dr. Egilman, the other bad things that you 3 contend Allergan did that you intend to offer 4 as opinions in this case?</p> <p>5 A. I can certainly list some of 6 them by going through the documents.</p> <p>7 Q. Can you tell me what they are?</p> <p>8 A. Sure.</p> <p>9 Actavis offered a rebate 10 program to Kroger for encouraging the sale --</p> <p>11 Q. I don't need more details about 12 the rebate program.</p> <p>13 Other than the four things 14 identified and offering a rebate program to 15 Kroger, can you list any other allegedly bad 16 things done by Allergan on which you intend 17 to offer an opinion?</p> <p>18 A. Sure. I can go through them.</p> <p>19 Q. And, Dr. Egilman, in the very 20 limited time I have available, I don't have 21 time, unfortunately, for you to go through 22 the documents.</p> <p>23 Without going through the 24 documents, can you identify any other bad</p>	<p>1 Q. So it's your expert opinion 2 that market expansion for opioids continued 3 through 2016; is that correct?</p> <p>4 A. Well, they may have continued 5 after, but there's a -- there's a 6 complication in the data because Class III 7 drugs -- Vicodin, Vicodin was changed from a 8 Class III to Class II, so it's hard --</p> <p>9 Q. Dr. Egilman, I hate to 10 interrupt, but you've actually answered my 11 question with respect to time period. I 12 appreciate that.</p> <p>13 A. No problem.</p> <p>14 Q. Do you intend to offer an 15 opinion on the specific amount by which you 16 believe Allergan expanded the opioids market?</p> <p>17 A. Per se, Allergan?</p> <p>18 Q. Yes.</p> <p>19 A. No. My opinion is that, again, 20 everybody's 100 percent responsible.</p> <p>21 Q. You cite a number of Kadian 22 marketing materials as the basis for your 23 opinions. Do you know for any those 24 materials whether Actavis or Allergan or its</p>

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<p>1 outside sales force ever used those marketing 2 materials after they acquired Kadian in 3 December 2008?</p> <p>4 A. That would be in the call notes 5 somewhere, so I would have to look at them by 6 date.</p> <p>7 Q. Did you review call notes 8 summaries for Actavis or Allergan that 9 included references to specific use of 10 marketing materials?</p> <p>11 A. I think so, but I don't recall 12 specifically.</p> <p>13 Q. Am I correct that you have not 14 attempted to determine whether any prescriber 15 in Ohio relied on any of the marketing 16 materials you reference in writing a 17 prescription for an opioid?</p> <p>18 A. No.</p> <p>19 Q. You have attempted to determine 20 whether a prescriber in Ohio relied on any of 21 those marketing materials in writing a 22 prescription for opioids?</p> <p>23 A. Yes.</p> <p>24 Q. What did you do to determine</p>	<p>1 correct. The second part, I don't know if 2 that happened.</p> <p>3 Q. You'll agree with me that you 4 didn't cite to the corrective action plan; 5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you didn't review the 8 corrective action plan?</p> <p>9 A. I think I may have reviewed it.</p> <p>10 Q. Can you explain how your 11 systematic retrieval of the best evidence 12 available regarding my client didn't include 13 a citation to evidence relating to the 14 corrective action plan?</p> <p>15 A. I had no evidence that the 16 corrective action plan was ever implemented.</p> <p>17 MS. WELCH: Dr. Egilman, I want 18 to make a statement for the record. 19 There are 220 Allergan documents 20 referenced in your report by my review 21 of the record. Nowhere in your report 22 do you explain how those documents 23 were retrieved, how they constitute 24 the best evidence, or how they support</p>
<p style="text-align: center;">Page 708</p> <p>1 whether a specific prescriber relied on those 2 specific marketing materials in writing a 3 prescription?</p> <p>4 A. Read the call notes where there 5 are references to that or if there are some 6 e-mails where sales representatives are 7 congratulated for getting a particular 8 prescriber --</p> <p>9 Q. Other than referencing a call 10 note or an e-mail, did you do anything to 11 determine whether a prescriber in Ohio relied 12 on the materials in writing a prescription?</p> <p>13 A. A particular prescriber?</p> <p>14 Q. Yes.</p> <p>15 A. No.</p> <p>16 Q. You also cite to a 17 February 2010 warning letter from the FDA to 18 Allergan; correct?</p> <p>19 A. Yes.</p> <p>20 Q. You don't cite to any of the 21 corrective action plan -- you do not cite to 22 the corrective action plan approved by the 23 FDA and implemented by Allergan; correct?</p> <p>24 A. Well, the first part is</p>	<p style="text-align: center;">Page 710</p> <p>1 your opinion.</p> <p>2 I don't have time to question 3 you about any of your other opinions 4 at this time. I reserve all rights to 5 seek additional time from the Court to 6 question you about the basis for those 7 opinions.</p> <p>8 MS. CONROY: Objection, move to 9 strike.</p> <p>10 THE VIDEOGRAPHER: Off the 11 record at 3:26.</p> <p>12 (Recess taken, 3:25 p.m. to 13 3:28 p.m.)</p> <p>14 THE VIDEOGRAPHER: We are back 15 on the record at 3:29 p.m.</p> <p>16 EXAMINATION</p> <p>17 BY MR. SWANSON:</p> <p>18 Q. Good afternoon, Dr. Egilman.</p> <p>19 My name is Brian Swanson, and I represent 20 Walgreens.</p> <p>21 A. Good afternoon.</p> <p>22 Q. Good afternoon.</p> <p>23 As Ms. Welch said, I wanted to 24 just begin with a housekeeping matter, but I</p>

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<p>1 think, given the scope of your opinions, the 2 Walgreens house is a little bit bigger. So 3 I'm going to have to do this a little bit 4 differently, I think.</p> <p>5 By my count, you have roughly 6 50 opinions cited in your report and appendix 7 that relate directly to Walgreens and 8 Walgreens' conduct. Does that sound 9 generally accurate to you, sir?</p> <p>10 A. I haven't done any counts.</p> <p>11 Q. No counts. Okay. Now, have 12 your team endeavored to put together a 13 Redweld to the opinions that relate 14 specifically to Walgreens?</p> <p>15 A. They're not my team. Those are 16 plaintiff lawyers in the case.</p> <p>17 Q. Okay. Have the plaintiffs' 18 lawyers endeavored to put together a Redweld 19 of the opinions that you have provided that 20 are specific to Walgreens?</p> <p>21 A. I don't know.</p> <p>22 Q. Am I correct, sir, that all of 23 the evidence that you rely on as the bases 24 for your opinions directed specifically to</p>	<p>1 of Walgreens materials you reviewed?</p> <p>2 A. No.</p> <p>3 Q. Did you personally review every 4 Walgreens document that you included in your 5 report as support for your opinions directed 6 to Walgreens?</p> <p>7 A. Yes.</p> <p>8 Q. Did you personally review the 9 entire document?</p> <p>10 A. To the extent that I had the 11 entire document, yes. I'm not sure I had the 12 entire document in all cases, though. I 13 think there may have been some documents that 14 were redacted, et cetera.</p> <p>15 Q. Okay. And the reason I ask is 16 that some of your appendices include excerpts 17 from Walgreens documents. You're aware of 18 that, correct, sir?</p> <p>19 MS. CONROY: Objection.</p> <p>20 THE WITNESS: That's correct.</p> <p>21 Q. (BY MR. SWANSON) And for those 22 exhibits where you've only included an 23 excerpt from a document, did you review the 24 entire document in arriving at your opinion?</p>
<p style="text-align: center;">Page 712</p> <p>1 Walgreens are included in Exhibits B1 to B489 2 of your report?</p> <p>3 A. I don't know.</p> <p>4 Q. Does your report and the 5 attached appendices include all of the bases 6 for your opinions that are directed 7 specifically to Walgreens?</p> <p>8 A. That I have in this litigation?</p> <p>9 Yes.</p> <p>10 Q. Yes, sir.</p> <p>11 Now, in arriving at those 12 opinions that you have directed specifically 13 to Walgreens, can you tell me how many 14 documents you personally reviewed that were 15 produced by Walgreens?</p> <p>16 A. No.</p> <p>17 Q. Was it more than 100?</p> <p>18 A. I don't know.</p> <p>19 Q. Was it more than a thousand?</p> <p>20 A. I don't know.</p> <p>21 Q. What is your best estimate 22 within 500 documents?</p> <p>23 A. I don't have one.</p> <p>24 Q. Can you tell me how many pages</p>	<p style="text-align: center;">Page 714</p> <p>1 A. Yes.</p> <p>2 Q. Your report says, at page 38, 3 that you reviewed depositions taken in the 4 case. Is that a true statement?</p> <p>5 A. Yes.</p> <p>6 Q. If you relied, sir, on 7 deposition testimony of any Walgreens 8 employee as a basis for any of your opinions 9 on Walgreens' account, you cited that 10 deposition testimony somewhere in your 11 report; correct?</p> <p>12 A. Correct.</p> <p>13 Q. Can you testify today that you 14 personally read any deposition from any 15 Walgreens employee current or former?</p> <p>16 A. I don't have any specific 17 recollection of reading any Walgreens 18 depositions.</p> <p>19 Q. Did you have any discussions 20 with any plaintiffs' lawyers about the 21 testimony of any Walgreens employees?</p> <p>22 A. I may have.</p> <p>23 Q. What do you recall 24 specifically, if anything, about that</p>

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<p>1 conversation?</p> <p>2 A. Nothing.</p> <p>3 Q. Do you recall which witness</p> <p>4 testimony you may have discussed with</p> <p>5 plaintiffs' lawyers?</p> <p>6 A. No.</p> <p>7 Q. Did you review any discovery</p> <p>8 responses that were provided by Walgreens?</p> <p>9 A. I've read responses to the</p> <p>10 complaint. I can't recall if I read</p> <p>11 Walgreens' responses or other responses. I</p> <p>12 read responses to the complaint.</p> <p>13 Q. How about any responses to</p> <p>14 interrogatories that Walgreens provided?</p> <p>15 A. I can't recall, but I --</p> <p>16 probably.</p> <p>17 I've gotten some responses,</p> <p>18 interrogatories but not all.</p> <p>19 Q. Sitting here today, you just</p> <p>20 can't recall one way or the other?</p> <p>21 A. Correct.</p> <p>22 Q. In your report, there are</p> <p>23 references to the DEA and the DOJ; correct?</p> <p>24 A. Yes.</p>	<p>1 order monitoring systems. You recall that</p> <p>2 generally; correct?</p> <p>3 A. Yes.</p> <p>4 Q. What I want to do is not</p> <p>5 retread those grounds, but I want to ask you</p> <p>6 specifically about your experience with the</p> <p>7 Walgreens specific order monitoring systems,</p> <p>8 okay?</p> <p>9 A. Yes.</p> <p>10 Q. I think it's true and you</p> <p>11 testified this morning you've never seen a</p> <p>12 live version of the Walgreens suspicious</p> <p>13 order monitoring system; right?</p> <p>14 A. Yes.</p> <p>15 Q. That's correct?</p> <p>16 A. Yes. I answered it yes.</p> <p>17 Q. Yeah. Okay.</p> <p>18 And you also didn't evaluate</p> <p>19 any design documents for the Walgreens</p> <p>20 suspicious order monitoring system in</p> <p>21 arriving at your opinions in this case;</p> <p>22 correct?</p> <p>23 A. I'm not sure that's correct.</p> <p>24 There's a PowerPoint I referred to, I think,</p>
<p style="text-align: center;">Page 716</p> <p>1 Q. And specifically you refer to a</p> <p>2 settlement between Walgreens and the DOJ and</p> <p>3 the DEA; right?</p> <p>4 A. Yes.</p> <p>5 Q. Did you speak with any current</p> <p>6 or former members of the DEA or DOJ in the</p> <p>7 process of forming your opinions in this</p> <p>8 case?</p> <p>9 A. No.</p> <p>10 Q. Are you familiar with</p> <p>11 Dr. Joseph Rannazzisi?</p> <p>12 A. Yes.</p> <p>13 Q. Have you ever met him?</p> <p>14 A. No.</p> <p>15 Q. Other than discussions that you</p> <p>16 may have had with plaintiffs' lawyers and</p> <p>17 your students and staff, are there any</p> <p>18 discussions that you had with anyone that</p> <p>19 form the bases of any of your opinions in</p> <p>20 this case against Walgreens?</p> <p>21 A. No.</p> <p>22 Q. Earlier this morning, Mr. Blank</p> <p>23 went through some general questions with you</p> <p>24 regarding your experience with suspicious</p>	<p style="text-align: center;">Page 718</p> <p>1 that Walgreens implemented that effectively</p> <p>2 reduced OxyContin prescriptions, and that may</p> <p>3 have referred in part to SOM programs.</p> <p>4 Q. Well, I'm not asking about</p> <p>5 documents that referred to the system. I'm</p> <p>6 asking about specific design documents for</p> <p>7 the system itself.</p> <p>8 You didn't review any of those</p> <p>9 in reaching your opinions on the Walgreens --</p> <p>10 A. I read something that said</p> <p>11 design.</p> <p>12 Q. Can I finish my question,</p> <p>13 please?</p> <p>14 A. Sure.</p> <p>15 Q. I'm asking you about specific</p> <p>16 design documents for the Walgreens SOM system</p> <p>17 itself. You didn't review any of those in</p> <p>18 reaching your opinions on Walgreens'</p> <p>19 suspicious order monitoring system; true?</p> <p>20 A. I don't know if that's true or</p> <p>21 not. I've read documents that review the</p> <p>22 Walgreens suspicious order monitoring system</p> <p>23 which included how it was or wasn't operating</p> <p>24 at different points in time. That would have</p>

Page 719	Page 721
<p>1 included elements of design.</p> <p>2 Q. In the monitoring orders in the</p> <p>3 Walgreens suspicious order monitoring system,</p> <p>4 is that done at the store level or a</p> <p>5 distribution level?</p> <p>6 A. I think it was done at the</p> <p>7 distribution level. At least when the</p> <p>8 Jupiter fiasco occurred, that's what was</p> <p>9 done. Whether it's changed now or not, I</p> <p>10 can't recall.</p> <p>11 Q. Have you done any evaluation of</p> <p>12 whether the Walgreens suspicious order</p> <p>13 monitoring system has changed or evolved over</p> <p>14 time?</p> <p>15 A. I'm sure it did after they paid</p> <p>16 the \$80 million fine.</p> <p>17 MR. SWANSON: I'll move to</p> <p>18 strike that.</p> <p>19 Q. (BY MR. SWANSON) It's a</p> <p>20 yes-or-no question.</p> <p>21 Have you done any evaluation of</p> <p>22 whether the Walgreens suspicious order</p> <p>23 monitoring system has changed or evolved over</p> <p>24 time? "Yes" or "no." Have you done that</p>	<p>1 level. I don't -- at least until the</p> <p>2 Jupiter citation or payment, they</p> <p>3 didn't look at things at the pharmacy</p> <p>4 level.</p> <p>5 At least to some extent, based</p> <p>6 on the program they implemented for</p> <p>7 OxyContin, they did look at the</p> <p>8 pharmacy level.</p> <p>9 Q. (BY MR. SWANSON) You're</p> <p>10 saying --</p> <p>11 A. After that point in time.</p> <p>12 Q. The suspicious order monitoring</p> <p>13 system did? That's your testimony?</p> <p>14 A. Well, Walgreens did. I'm not</p> <p>15 sure if it was technically called part of the</p> <p>16 suspicious order monitoring system or if it's</p> <p>17 just something Walgreens was doing as part of</p> <p>18 its attempt to reduce OxyContin</p> <p>19 prescriptions.</p> <p>20 Q. Okay. My question is directed</p> <p>21 specifically to the suspicious order</p> <p>22 monitoring system. Does that system track</p> <p>23 dispensing of pharmaceuticals or orders for</p> <p>24 pharmaceuticals or something else? If you</p>
<p>1 analysis?</p> <p>2 A. Yes.</p> <p>3 Q. Describe for me how the system</p> <p>4 or technology changed over time.</p> <p>5 A. Oh, I don't remember the</p> <p>6 specific changes.</p> <p>7 Q. Well, what evaluation did you</p> <p>8 do that you can testify about, sir?</p> <p>9 A. Well, I think there was</p> <p>10 specific changes in the SOM system after the</p> <p>11 \$80 million cite that I mentioned as part of</p> <p>12 the settlement agreement.</p> <p>13 Q. What does the Walgreens</p> <p>14 suspicious order monitoring system track? Is</p> <p>15 it the dispensing of pharmaceuticals or</p> <p>16 orders or something else?</p> <p>17 MS. CONROY: Objection.</p> <p>18 THE WITNESS: It depends on the</p> <p>19 point in time. At one point in time,</p> <p>20 it looked at shipments from the</p> <p>21 distribution sites, although it didn't</p> <p>22 really look at them. It was designed</p> <p>23 to look at them. Walgreens is capable</p> <p>24 of looking at orders at the pharmacy</p>	<p>1 know.</p> <p>2 MS. CONROY: Objection.</p> <p>3 THE WITNESS: It used to just</p> <p>4 track orders from the distribution</p> <p>5 sites, as I recall.</p> <p>6 I think now they look at</p> <p>7 pharmacy works, at least in certain</p> <p>8 circumstances. Whether that's</p> <p>9 included as part of SOM or the</p> <p>10 particular program that I talked</p> <p>11 about, I don't know.</p> <p>12 Q. (BY MR. SWANSON) Do you know</p> <p>13 how the thresholds or limits are set in the</p> <p>14 Walgreens suspicious order monitoring system?</p> <p>15 MS. CONROY: Objection.</p> <p>16 THE WITNESS: No.</p> <p>17 Q. (BY MR. SWANSON) Do you know</p> <p>18 that the plaintiffs' lawyers deposed several</p> <p>19 Walgreens individuals regarding the Walgreens</p> <p>20 suspicious order monitoring system?</p> <p>21 A. Yes.</p> <p>22 Q. Did you review any of that</p> <p>23 testimony to inform your opinions regarding</p> <p>24 the suspicious order monitoring system?</p>

	Page 723	Page 725
1	A. No.	one. It makes no difference to me.
2	Q. As you sit here today, do you	2 A. Do you have a copy for me?
3	believe that you have a better understanding	3 Q. Sure. Or do you want --
4	of the Walgreens suspicious order monitoring	4 Go ahead.
5	system than the architects of that system?	5 In support of your opinion 7.3,
6	A. No.	6 you cite a single document. That's
7	Q. Now, I want to ask you about a	7 WAGFLDEA1032; correct?
8	few of your opinions. I'm not going to have	8 A. Correct.
9	time to go through all of them.	9 Q. And then, you excerpt from that
10	I'd like to begin with	10 document in your Exhibit B3; right?
11	opinion 7.3. Do you have your report in	11 A. Correct.
12	front of you so you can look at it?	12 Q. Okay. Now, you call Exhibit 73
13	A. I do.	13 an opinion. But what you're really doing is,
14	Q. Okay. And -- while we do that,	14 as you're noted, you're pulling quotes from a
15	it's on page 62.	15 Walgreens document; right?
16	Are you there? 7.3?	16 MS. CONROY: Objection.
17	A. Yes.	17 THE WITNESS: Part of it's a
18	Q. Okay. Opinion 7.3 reads	18 quote; part of it's an opinion.
19	"Opinion. Walgreens' systems could be	19 Q. (BY MR. SWANSON) Can you tell
20	manipulated to allow stores to circumvent	20 me what part of it, then, is an opinion?
21	quantity restrictions -- known issue -- this	21 A. "Walgreens' systems could be
22	is how the system always worked."	22 manipulated to allow stores to circumvent
23	Did I read that correctly?	23 quantity restrictions."
24	A. No.	24 Q. So that's your opinion in 7.3,
	Page 724	Page 726
1	Q. I did not?	1 and then the quote is -- is what, a fact?
2	A. That's correct.	2 MS. CONROY: Objection.
3	Q. Can you tell me what I read	3 THE WITNESS: Well, the rest --
4	incorrectly?	4 the rest is the -- is the facts.
5	A. You left the quotes off of	5 Okay?
6	"This is how the system always works."	6 I mean, the quote -- the quote
7	Q. Okay.	7 is a fact, and that's part of the
8	A. That's a quote from the	8 basis of the opinion, but the basis of
9	document.	9 the opinion is the rest of the
10	Q. Okay. That's fair. I'll read	10 document.
11	it again.	11 Q. (BY MR. SWANSON) Okay. So
12	Exhibit -- or opinion 7.3.	12 when you refer to Walgreens' systems in your
13	"Opinion. Walgreens systems could be	13 opinion, what systems are you referring to
14	manipulated to allow stores to circumvent	14 specifically?
15	quantity restrictions -- known issue -- quote	15 A. Well, here the AS400 ordering
16	This is how the system always worked, closed	16 system.
17	quote."	17 Q. Is that different from the SOMS
18	Is that your opinion?	18 system we were just talking about?
19	A. Yes.	19 A. I don't know.
20	Q. And then you say "See Exhibit	20 Q. I take it you've never seen the
21	B3 hereto attached"; right?	21 Walgreens ordering system that you are
22	A. Correct.	22 opining on in 7.3; correct?
23	Q. So can we look at Exhibit B3?	23 A. If it's different from the
24	I have a copy or you can be provided with	24 ordering system, yes.

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<p>1 Q. What do you mean "If it's 2 different from the ordering system." Do you 3 mean if it's different from the SOMS system?</p> <p>4 A. No.</p> <p>5 This document refers to the 6 ordering system.</p> <p>7 Q. Correct.</p> <p>8 A. Okay? So if the suspicious 9 order monitoring system is separate from the 10 ordering system and not interact -- it does 11 not interact with the ordering system, then 12 you're correct.</p> <p>13 Q. Right. And I'm asking do you 14 know if it does or does not?</p> <p>15 A. Interact with the ordering 16 system?</p> <p>17 Q. Yes, sir.</p> <p>18 A. I don't know.</p> <p>19 Q. And you can't tell me how 20 orders are entered into the Walgreens 21 ordering system at the pharmacy level, that 22 ordering system that's explained or described 23 in 7.3; right?</p> <p>24 A. No, this describes how they're</p>	<p>1 know how to do it, and you personally didn't 2 know how to quote/unquote manipulate the 3 system; right?</p> <p>4 A. That's correct.</p> <p>5 Q. What you're doing instead is 6 you're reading a quote from somebody at 7 Walgreens, and you're offering that quote as 8 your opinion. True?</p> <p>9 MS. CONROY: Objection.</p> <p>10 THE WITNESS: That's correct.</p> <p>11 Q. (BY MR. SWANSON) Now, do you 12 provide any analysis, expert analysis that 13 would connect your opinion to the quote from 14 the Walgreens employee?</p> <p>15 A. The expert --</p> <p>16 Yes.</p> <p>17 Q. I'm sorry, I don't understand 18 your answer. The expert --</p> <p>19 A. The answer was yes.</p> <p>20 Q. And --</p> <p>21 A. I cut my answer off to give you 22 a yes.</p> <p>23 Q. Thank you. What --</p> <p>24 A. No problem.</p>
Page 728	Page 730
<p>1 enter -- or how the ordering system is 2 circumvented.</p> <p>3 Q. You personally have never 4 entered orders into the Walgreens' system; 5 right?</p> <p>6 A. That's correct.</p> <p>7 Q. So when you talk about the 8 ability to manipulate, what you're doing is 9 you're reading a quote from somebody else who 10 has entered orders into that system; true?</p> <p>11 A. No. This is Christine Atwell 12 who's describing how a particular store is 13 manipulating the AS400 ordering system. 14 She's not necessarily the person -- she's not 15 the person manipulating the system or 16 entering orders.</p> <p>17 Q. I'm trying to understand what 18 expertise you believe you bring to bear on 19 this opinion.</p> <p>20 You personally have never 21 entered orders into a Walgreens ordering 22 system; right?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And in 2011, you didn't</p>	<p>1 Q. What written analysis do you 2 provide connecting your opinion in 7.3 to the 3 document that you claim supports it?</p> <p>4 A. None.</p> <p>5 Q. When it comes to describing how 6 the Walgreens ordering system works that's 7 described in Exhibit B3, would you agree that 8 the architects of that system are better able 9 to explain how it works than you are?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know who Barb Martin is?</p> <p>12 A. No. She's the manager of 13 inventory for drugstore in this document.</p> <p>14 Q. Right. And do you see that 15 she's -- she is an author of the bottom 16 e-mail in Exhibit B3?</p> <p>17 A. Correct.</p> <p>18 Q. And she's the one who is 19 talking about how the system has always 20 worked?</p> <p>21 A. Yes.</p> <p>22 Q. And do you know that Ms. Martin 23 was deposed in this case?</p> <p>24 A. No.</p>

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<p>1 Q. Do you know who 2 Christine Atwell is other than that she's the 3 recipient of an e-mail?</p> <p>4 A. Well, she's controlled 5 substances function manager, apparently.</p> <p>6 Q. Do you know what that means? 7 A. No.</p> <p>8 Q. Do you know what her job -- 9 A. I don't know what her job 10 description is.</p> <p>11 Q. Let me ask you about a related 12 exhibit. It's Exhibit 56, if you could, 13 please.</p> <p>14 A. Are you done with this one? 15 Q. I am. 16 So we can begin, I guess, by 17 looking in your report at page -- page 70, 18 you have opinion 7.56; correct? 19 A. Correct.</p> <p>20 Q. "Opinion. Walgreens knew 21 pharmacists could manipulate quantities with 22 the AS400 software, and they knew this could 23 result in criminal not just civil actions." 24 Is that your opinion?</p>	<p>1 is. 2 Q. Okay. Do you know if Rex 3 Swords was deposed? 4 A. No. 5 Q. Do you know if Tasha Polster 6 was deposed? 7 A. No. 8 Q. Do you know if Dwayne Pinon was 9 deposed? 10 A. No. 11 Q. Do you know if Kermit Crawford 12 was deposed? 13 A. No. 14 Q. You've never read the testimony 15 of any of those individuals; is that true? 16 A. Correct. 17 Q. The -- Mr. Swords in this 18 e-mail describes a meeting that he had with 19 the -- with Mr. Rannazzisi; is that right? 20 A. Correct. 21 Q. And what you've done is you say 22 your opinion is that "Walgreens knew this 23 could result in criminal, not just civil 24 actions"; right?</p>
Page 732	Page 734
<p>1 A. Correct. 2 Q. And then you direct us to 3 Exhibit B56; right? 4 A. Yes. 5 Q. Are you ready? 6 A. I think so. 7 Q. Okay. The -- 8 MS. CONROY: No. 9 Q. (BY MR. SWANSON) The only 10 document you cite as the basis for your 11 opinion 56 is a Walgreens document Bates 12 stamped WAGMDL658246; correct? 13 A. Correct. 14 Q. And is that the document that 15 has been excerpted below the Bates number in 16 the exhibit? 17 A. Yes. 18 Q. And you don't cite any 19 deposition testimony or other testimony from 20 any Walgreens employees regarding this 21 opinion; true? 22 A. Correct. 23 Q. Do you know who Rex Swords is? 24 A. I don't know what his job title</p>	<p>1 A. That's part of what my opinion 2 is. 3 Q. Okay. Well, let me ask you. 4 Your initial -- the first part of your 5 opinion is that "Walgreens knew pharmacists 6 could manipulate quantities with the AS400 7 software"; right? 8 A. Correct. 9 Q. Is there anything in this 10 document that you cite as the sole basis for 11 this opinion that relates to pharmacists' 12 so-called ability to manipulate quantities? 13 A. No. That's in the other 14 document. 15 Q. The -- all right. So I want to 16 focus what's on the -- what's on the document 17 that's in front of us. Okay? 18 Do you see that Mr. Swords 19 provides a bullet list of statements from a 20 meeting that he had with Mr. Rannazzisi. 21 A. Yes. 22 Q. Now, you, in your opinion, you 23 quote a -- one of the lines from that bullet 24 point list; right?</p>

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<p>1 A. Yes.</p> <p>2 Q. And it's the last one. "If</p> <p>3 this continues, they won't be accessing [sic]</p> <p>4 civil penalties. There may be criminal</p> <p>5 penalties"; right?</p> <p>6 A. Correct.</p> <p>7 Q. Who made that statement?</p> <p>8 A. Rannazzisi.</p> <p>9 Q. And what's your basis for</p> <p>10 saying that Rannazzisi made that statement?</p> <p>11 A. The lead sentence. "Rannazzisi</p> <p>12 presented a large PowerPoint deck on</p> <p>13 prescription drug trafficking and abuse for</p> <p>14 approximately two hours." Comments, quote.</p> <p>15 Q. Right. I understand.</p> <p>16 The -- some of the bullet</p> <p>17 points have quotation marks around them;</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. And others don't; right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. What's the difference</p> <p>23 between those in quotes and those that aren't</p> <p>24 in quotes?</p>	<p>1 of activity."</p> <p>2 Q. So what expertise do you then</p> <p>3 bring to bear on this document if all one</p> <p>4 needs to do is read the quote that you</p> <p>5 believe comes from Rannazzisi but can't</p> <p>6 confirm?</p> <p>7 A. Well, the expertise is finding</p> <p>8 the document in the first place. Doing the</p> <p>9 analysis to find the document. Putting it in</p> <p>10 the context of everything else that was going</p> <p>11 on at the time with respect to Walgreens.</p> <p>12 Knowing about the Jupiter situation and the</p> <p>13 other associated e-mails and conduct.</p> <p>14 So it's -- it's finding</p> <p>15 material and putting it in some kind of a</p> <p>16 context and then explaining it. And</p> <p>17 explaining the meaning of it.</p> <p>18 Q. The -- all right. So</p> <p>19 explaining the meaning and the context of the</p> <p>20 quote you've cited there, you know that</p> <p>21 Mr. Swords actually attended the meeting that</p> <p>22 he's writing about; correct?</p> <p>23 A. Yes.</p> <p>24 Q. So the best evidence of what</p>
<p style="text-align: center;">Page 736</p> <p>1 A. That's it. Some were in</p> <p>2 quotes. I assume the ones in quotes were</p> <p>3 from the presentation, but I don't know. But</p> <p>4 they're all -- they were all things that, in</p> <p>5 my opinion, Rannazzisi presented.</p> <p>6 Q. Well, it's not your opinion.</p> <p>7 It's your speculation; right?</p> <p>8 MS. CONROY: Objection.</p> <p>9 THE WITNESS: No.</p> <p>10 Q. (BY MR. SWANSON) Okay. The --</p> <p>11 why do you not provide any written analysis</p> <p>12 connecting your opinion to the document that</p> <p>13 you claim supports it?</p> <p>14 A. Because I think it's obvious on</p> <p>15 its face. It's a quote from the document.</p> <p>16 And the other document's also obvious on its</p> <p>17 face. It says "Someone's manipulating the</p> <p>18 system to increase orders appropriately."</p> <p>19 The document says that. Okay. I mean, I</p> <p>20 could write the document says that the AS400</p> <p>21 system can be manipulated to increase orders</p> <p>22 beyond those permissible. And this document</p> <p>23 says "Rannazzisi told them that there could</p> <p>24 be civil and criminal penalties for that kind</p>	<p style="text-align: center;">Page 738</p> <p>1 happened at the meeting and what was stated</p> <p>2 at the meeting would come from Mr. Swords,</p> <p>3 not from you; right?</p> <p>4 A. I don't know.</p> <p>5 Q. Let me ask you -- you can put</p> <p>6 that one aside.</p> <p>7 There's been a lot of -- you've</p> <p>8 given a lot of testimony about what you've</p> <p>9 called or termed "the venture," and I don't</p> <p>10 want to repeat that testimony.</p> <p>11 Your opinion is that Walgreens</p> <p>12 is a member of what you call the venture;</p> <p>13 right?</p> <p>14 A. Correct.</p> <p>15 Q. And your report doesn't</p> <p>16 identify it, when it is that you claim</p> <p>17 Walgreens became a member of what you called</p> <p>18 the venture; right?</p> <p>19 A. Correct.</p> <p>20 Q. Do you know when Walgreens</p> <p>21 became a member of what you call the venture?</p> <p>22 A. No. There's no date specific.</p> <p>23 Q. Do you have a year specific?</p> <p>24 A. No. Because the time goes</p>

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<p>1 forward and back, in my understanding of a 2 bank robbery collective.</p> <p>3 In other words, if I join a 4 group of bank robbers today, and they've been 5 robbing banks for 20 years, I'm responsible 6 for the 20 years of bank robberies before I 7 joined, and I'm responsible for anything 8 after I join --</p> <p>9 Q. I'm going to interrupt you. 10 You gave your answer to a yes-or-no question 11 as no, and I'll move to strike everything 12 after that.</p> <p>13 What act do you claim -- 14 MS. CONROY: Objection.</p> <p>15 Q. (BY MR. SWANSON) -- was the 16 act that brought Walgreens within what you 17 call the venture?</p> <p>18 What was the initial act?</p> <p>19 A. I don't have an initial act.</p> <p>20 Q. Do you claim that Walgreens 21 remains a member of what you call the 22 venture?</p> <p>23 A. Yes.</p> <p>24 Q. What was the last action that</p>	<p>1 Q. Do you know how many it has in 2 Cuyahoga County? 3 A. No. 4 Q. Okay. I want to turn back to 5 your opinions, and I want to ask you about 6 opinion 7.155, which is on page 85. 7 A. Okay. 8 Q. Okay. You say, "Opinion. 9 Pharmacies could have reduced the opioid 10 problem" and then you say "See Exhibit B155 11 hereto attached." Right? 12 A. Correct. 13 Q. Okay. So can we look at 14 Exhibit B155? 15 Okay. So Exhibit B155 is your 16 opinion that pharmacies could have reduced 17 the opioid problem; right? 18 A. Correct. 19 Q. Correct. And then the only 20 document you cite in support of that opinion 21 is the document WAGMDL655767; true? 22 A. In this opinion, but they have 23 the whole PowerPoint with Walgreens reducing 24 the sale of OxyContin and describing the</p>
<p style="text-align: center;">Page 740</p> <p>1 Walgreens took to maintain its status as a 2 member of what you call the venture?</p> <p>3 A. I don't know.</p> <p>4 Q. You don't say anywhere in your 5 report when Walgreens began distributing 6 opioids to its pharmacies in Cuyahoga and 7 Summit counties; right?</p> <p>8 A. Correct.</p> <p>9 Q. Do you know?</p> <p>10 A. No.</p> <p>11 Q. Do you know when Walgreens 12 began distributing to any of its pharmacies 13 in Cuyahoga or Summit counties?</p> <p>14 A. No.</p> <p>15 Q. Do you even know what decade it 16 was?</p> <p>17 A. Began? No, I don't know.</p> <p>18 Q. Is that something that you 19 never tried to find out when you were 20 coming -- putting together your opinions?</p> <p>21 A. Correct.</p> <p>22 Q. Do you know how many pharmacies 23 Walgreens has in Summit County today?</p> <p>24 A. No.</p>	<p style="text-align: center;">Page 742</p> <p>1 entire program that they implemented 2 elsewhere --</p> <p>3 Q. Okay.</p> <p>4 A. -- in the report.</p> <p>5 Q. Let's focus on the page that 6 you've excerpted in Exhibit B155.</p> <p>7 You've put some -- or some of 8 your helpers have put some arrows in the 9 document; right?</p> <p>10 A. Right.</p> <p>11 Q. And it's a little difficult to 12 read. I'm going to try and you tell me if I 13 get it right; is that fair?</p> <p>14 A. Sure.</p> <p>15 Q. This is titled "National 16 Target, Good Faith Dispensing Checklist"; 17 right?</p> <p>18 A. Correct.</p> <p>19 Q. And then the first arrow points 20 to a box that reads "Additional checklist 21 requirements. Every" --</p> <p>22 A. Wait, wait, wait. Are we 23 looking at the same thing?</p> <p>24 Q. I'm looking at B155?</p>

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	<p>1 A. Oh, you gave me 55.</p> <p>2 Q. Oh.</p> <p>3 A. Sorry.</p> <p>4 Q. That's okay. 155, please.</p> <p>5 A. That's a related document.</p> <p>6 Q. Okay. Now are we on the same page?</p> <p>7 A. Now we're on the same page.</p> <p>8 Q. And you are looking at a PowerPoint slide from WAGMDL655767; right?</p> <p>9 A. Right.</p> <p>10 Q. The Powerpoint slide is entitled "Target Drug GFD Checklist"; right?</p> <p>11 A. Yeah. The --</p> <p>12 Q. I'm looking at B155.</p> <p>13 A. The slide that's extracted, yes.</p> <p>14 Q. This is the one you put in your report; right?</p> <p>15 A. Well, I have the entire Bates document.</p> <p>16 Q. I'm talking about what you put in your report. It's the one slide. Right?</p> <p>17 A. That's what I want to focus on with you.</p>	<p>1 A. Correct.</p> <p>2 Q. And I want to focus on the red arrow on the right and what it points to.</p> <p>3 A. Okay.</p> <p>4 Q. It says "Additional checklist requirements. Every quote/unquote no is a red flag. Use your professional judgment to assess the prescription."</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And then underneath it says -- there's a line 4; right?</p> <p>7 A. Correct.</p> <p>8 Q. It says "The patient has received the prescription from Walgreens before."</p> <p>9 A. Correct.</p> <p>10 Q. And if that's checked no, then it directs the pharmacist to use his or her professional judgment to assess the prescription; right?</p> <p>11 A. Correct.</p> <p>12 Q. And then the same goes from the other criteria that are underneath it; right?</p> <p>13 A. Any no goes to that bolded</p>
	<p style="text-align: center;">Page 744</p> <p>1 MS. CONROY: Objection. The report contains the entire document.</p> <p>2 THE WITNESS: The report contains the entire document. The entire Bates document is cited here.</p> <p>3 Q. (BY MR. SWANSON) Can you look at the slide on the exhibit you attached?</p> <p>4 That's what I want to ask you about.</p> <p>5 A. Yeah. I don't want you to --</p> <p>6 Q. I'm not misleading anyone, sir.</p> <p>7 A. No, I said I didn't want to</p> <p>8 mislead you --</p> <p>9 Q. Let's focus on it.</p> <p>10 A. It says the entire document --</p> <p>11 Q. We're good.</p> <p>12 A. -- is the basis of the opinion.</p> <p>13 Q. Got it.</p> <p>14 The slide is entitled "Target Drug GFD Checklist"; right?</p> <p>15 A. Correct.</p> <p>16 Q. And then either you or your helper has put in a couple of red arrows; right?</p>	<p>1 language.</p> <p>2 Q. Now, I take it you don't take issue with Walgreens for instructing its pharmacists to exercise their professional judgment; right?</p> <p>3 A. No, I -- I say this is a very good program. That's what I cite it for.</p> <p>4 Q. Okay. And that was going to be my next question you got there. You've cited this Walgreens document because you believe that Walgreens' good faith dispensing checklist was a valuable program that helped reduce opioid overprescriptions; right?</p> <p>5 A. Exactly.</p> <p>6 Q. Okay. And the -- you don't cite any documents that describe or discuss how Walgreens instructed its pharmacists before this document was created; right?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. Do you know what Walgreens policies or procedures were with respect to dispensing prior to the good faith dispensing checklist that you've identified in Exhibit 155?</p>

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<p>1 A. No. I only know the results. 2 Q. But you don't know, for 3 example, if before 2013, it was Walgreens' 4 policy to direct their pharmacists to use 5 their professional judgment in assessing 6 prescriptions that they were asked to fill; 7 right?</p> <p>8 A. I'm sure that general language 9 was somewhere in Walgreens' policy book.</p> <p>10 Q. Now -- well, and do you know if 11 prior to 2013, pharmacists at Walgreens had 12 different practices when it came to filling 13 prescriptions for opioids? Do you know that 14 just one way or the other?</p> <p>15 A. Yes.</p> <p>16 Q. There were different practices 17 within Walgreens before 2013; is that your 18 testimony?</p> <p>19 MS. CONROY: Objection.</p> <p>20 THE WITNESS: That's my belief.</p> <p>21 Q. (BY MR. SWANSON) But I want to 22 know what your testimony -- what you know, 23 not what you believe. Do you know if there 24 were different practices at Walgreens before</p>	<p>1 pharmacists to review your prescription and 2 fill it; right?</p> <p>3 A. Yes.</p> <p>4 Q. And in general, it would be a 5 problem for you if your patients -- and for 6 your patients if the pharmacist didn't fill 7 your legitimate prescriptions; right?</p> <p>8 MS. CONROY: Objection.</p> <p>9 THE WITNESS: Not necessarily.</p> <p>10 Q. (BY MR. SWANSON) Well, as a 11 physician, sir, do you expect a pharmacist to 12 fill a legitimate prescription that you write 13 based on your assessment of patient's need; 14 right?</p> <p>15 A. Not by itself, no.</p> <p>16 Q. What did you mean "not by 17 itself"?</p> <p>18 A. I mean the pharmacy -- there's 19 a physician role and there's a pharmacist 20 role. The pharmacist may have additional 21 information that I don't have about the 22 patient. And that -- you don't even restrict 23 that to opioids. For example, a patient may 24 be on --</p>
<p>1 2013?</p> <p>2 A. Yes.</p> <p>3 Q. What were the policies at 4 Walgreens with regard to dispensing -- good 5 faith dispensing prior to 2013?</p> <p>6 A. I don't know what they were. I 7 just know what the effect was.</p> <p>8 Q. You're not a pharmacist; right?</p> <p>9 A. Correct.</p> <p>10 Q. You've never been trained as a 11 pharmacist?</p> <p>12 A. Correct.</p> <p>13 Q. You haven't offered any 14 opinions and don't intend to offer any 15 opinions on the specific rules and 16 regulations that govern the pharmacy 17 profession; right?</p> <p>18 A. Correct.</p> <p>19 Q. You've testified a few times in 20 the deposition that you have prescribed 21 opioids to your patients in the past; right?</p> <p>22 A. Yes.</p> <p>23 Q. And when you prescribe these 24 opioids to your patients, you expect</p>	<p>1 Page 748</p> <p>2 Q. Let me withdraw the question, 3 then, and restrict it to opioids so we're 4 keeping on focus here.</p> <p>5 As a physician, you expect a 6 pharmacist to fill a legitimate prescription 7 for opioids that you write based on your 8 assessment of your patient's need; right?</p> <p>9 A. No.</p> <p>10 Q. Why not?</p> <p>11 A. Because they have an 12 independent responsibility to evaluate 13 whether or not that's an appropriate drug for 14 that patient. They have independent 15 information that I don't have access to to 16 evaluate that question.</p> <p>17 Q. Let me ask a slightly more 18 nuanced question.</p> <p>19 As a physician, you expect a 20 pharmacist to exercise his or her 21 professional judgment to evaluate whether to 22 fill a legitimate opioid prescription that you 23 write based on your assessment of a patient's 24 needs; right?</p> <p>25 A. That's a beginning, yes. I</p>

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<p>1 expect more than that.</p> <p>2 Q. What more do you expect of a</p> <p>3 pharmacist than that he or she exercises his</p> <p>4 or her professional judgment?</p> <p>5 A. I expect the pharmacist to</p> <p>6 check to see what other drugs that person is</p> <p>7 on. What other prescriptions they've been</p> <p>8 getting. Whether they've been getting</p> <p>9 similar prescriptions from other</p> <p>10 practitioners in the current era.</p> <p>11 I expect the pharmacist to</p> <p>12 check to see whether that patient has been</p> <p>13 getting drugs from other pharmacies not</p> <p>14 related to his or her pharmacy in a way that</p> <p>15 would lead to abuse or addiction.</p> <p>16 Q. And those are the sorts of</p> <p>17 assessments that Walgreens documented in its</p> <p>18 target drug good faith dispensing checklist</p> <p>19 that you recommended; correct?</p> <p>20 A. In 2015, correct.</p> <p>21 Q. In what year?</p> <p>22 A. In 2015, I think. Wasn't it?</p> <p>23 Q. It's your opinion.</p> <p>24 A. No, it's a fact. Can we look</p>	<p>1 THE VIDEOGRAPHER: Going off</p> <p>2 the record at 4:11.</p> <p>3 (Recess taken, 4:10 p.m. to</p> <p>4 4:35 p.m.)</p> <p>5 THE VIDEOGRAPHER: We are back</p> <p>6 on the record at 4:36.</p> <p>7 EXAMINATION</p> <p>8 BY MR. HYNES:</p> <p>9 Q. Good afternoon again. My name</p> <p>10 is Paul Hynes. I represent CVS Indiana LLC</p> <p>11 and CS Rx Services, Inc. Those are the CVS</p> <p>12 entities who are defendants in this case.</p> <p>13 And I want to ask a preliminary question: Is it true that your opinions where you state CVS, do they relate to one or both of those entities?</p> <p>14 A. That would be my assumption,</p> <p>15 yes.</p> <p>16 Q. That's your assumption.</p> <p>17 We can refer, throughout my</p> <p>18 examination, to those entities as CVS, if</p> <p>19 that's easier.</p> <p>20 A. Right. There may be an</p> <p>21 exception to that. I think I make reference</p> <p>22 to that. I think I make reference to the CVS</p>
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<p>1 at a document?</p> <p>2 Q. There are facts that aren't</p> <p>3 opinions.</p> <p>4 A. If I got the year wrong, I'll</p> <p>5 correct the year.</p> <p>6 Q. All right.</p> <p>7 A. No. This is 2013.</p> <p>8 Why don't we take a break.</p> <p>9 Q. You know, I might be done, or I</p> <p>10 might have one or two more questions.</p> <p>11 A. Well, if you're done, then we</p> <p>12 get a break. No problem.</p> <p>13 You know, they've called me</p> <p>14 experienced. The one thing I'm experienced</p> <p>15 with --</p> <p>16 Q. You know when you're about</p> <p>17 done?</p> <p>18 A. No, I know when an attorney says</p> <p>19 "One more question," it's usually 25 to 30</p> <p>20 questions.</p> <p>21 MR. SWANSON: I'll pass the</p> <p>22 witness.</p> <p>23 THE WITNESS: Why don't we take</p> <p>24 a break.</p>	<p>1 PBM that did the formularies for Summit and</p> <p>2 Cuyahoga County.</p> <p>3 Q. Can you tell me where you refer</p> <p>4 to the CVS PBM in your report?</p> <p>5 A. I think it's mentioned.</p> <p>6 Q. You think it's mentioned?</p> <p>7 A. I think so.</p> <p>8 Q. Can you point me to a section</p> <p>9 or a page number or an exhibit?</p> <p>10 A. No. But there's one opinion</p> <p>11 that's wrong that's titled "EBMs" thanks for</p> <p>12 reminding me.</p> <p>13 For the Medicaid, the state</p> <p>14 Medicaid did not use an external EBM for its</p> <p>15 formulary. It used a -- its own formulary</p> <p>16 committee.</p> <p>17 The Cuyahoga and Summit County</p> <p>18 used CVS, and two others. I think I've got a</p> <p>19 list of them here. And there's a deposition</p> <p>20 testimony of Woods in the case of Cuyahoga</p> <p>21 County, at least I think referenced in the</p> <p>22 report.</p> <p>23 Q. Okay.</p> <p>24 MR. HYNES: Can we go off the</p>

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<p>1 record for one minute?</p> <p>2 THE VIDEOGRAPHER: Sure. Off</p> <p>3 the record at 4:38.</p> <p>4 (Recess taken, 4:37 p.m. to</p> <p>5 4:38 p.m.)</p> <p>6 THE VIDEOGRAPHER: We are back</p> <p>7 on the record at 4:39.</p> <p>8 MR. HYNES: And just for the</p> <p>9 record, I will reserve some time to</p> <p>10 address that opinion later in the day,</p> <p>11 time permitting.</p> <p>12 Q. (BY MR. HYNES) Dr. Egilman, can</p> <p>13 you please turn to page 134 of your report?</p> <p>14 A. Okay.</p> <p>15 Q. Showing you Section 7.479</p> <p>16 states that "CVS's suspicious order</p> <p>17 monitoring program did not monitor suspicious</p> <p>18 orders."</p> <p>19 Is that an opinion that you're</p> <p>20 rendering in this case?</p> <p>21 A. Yes.</p> <p>22 Q. Did you consult with any</p> <p>23 plaintiffs' lawyers in arriving at this</p> <p>24 opinion?</p>	<p>1 Q. Sure. Do you have it?</p> <p>2 A. Just let me be clear, here,</p> <p>3 when you say "do I have it," in the notice of</p> <p>4 this deposition, I was not asked to bring a</p> <p>5 single piece of paper. But I have it.</p> <p>6 Q. Okay. Well, then let's look at</p> <p>7 it.</p> <p>8 A. You're welcome.</p> <p>9 Q. Is the document in front of you</p> <p>10 a CVS SOM policy?</p> <p>11 A. I don't have the whole --</p> <p>12 Do you have the whole document?</p> <p>13 I don't know. I have to look</p> <p>14 at the whole document.</p> <p>15 Q. Are you aware that CVS has</p> <p>16 policies governing its suspicious order</p> <p>17 monitoring system?</p> <p>18 A. Yes.</p> <p>19 Q. Did you review any of those</p> <p>20 policies in preparing the report?</p> <p>21 A. Yes.</p> <p>22 Q. Which policies did you review?</p> <p>23 A. I don't recall.</p> <p>24 Q. To the best of your</p>
<p style="text-align: center;">Page 756</p> <p>1 A. No.</p> <p>2 Q. Okay. The next sentence states</p> <p>3 "CVS's SOM policy specified that if multiple</p> <p>4 orders for the same store are flagged during</p> <p>5 the same month, all orders after that first</p> <p>6 order will not be investigated and will be</p> <p>7 released based on the release of the first</p> <p>8 order."</p> <p>9 Did read that correctly?</p> <p>10 A. No.</p> <p>11 Q. What did I not read correctly?</p> <p>12 A. The last phrase where it's got</p> <p>13 the word "automatically."</p> <p>14 Q. Okay. "Will be automatically</p> <p>15 released based on the release of the first</p> <p>16 order." Is that what you're referring to?</p> <p>17 A. Yes, that's the part that you</p> <p>18 read incorrectly.</p> <p>19 Q. Okay. That statement refers to</p> <p>20 CVS's SOM policy; correct?</p> <p>21 A. Correct.</p> <p>22 Q. You don't cite any CVS SOM</p> <p>23 policies in support of this opinion, do you?</p> <p>24 A. Can I see 479?</p>	<p style="text-align: center;">Page 758</p> <p>1 recollection, is the document that you</p> <p>2 excerpted in Exhibit B.479 a CVS SOM policy?</p> <p>3 A. I have to look at it. I don't</p> <p>4 remember.</p> <p>5 Q. To the best of your</p> <p>6 recollection?</p> <p>7 A. To the best of my recollection,</p> <p>8 I need to look at the document.</p> <p>9 Q. I will represent to you that</p> <p>10 document that you've excerpted there is an</p> <p>11 attachment to a November 2012 e-mail from</p> <p>12 Craig Schiavo.</p> <p>13 Do you know who prepared that</p> <p>14 document?</p> <p>15 A. The document that you're not</p> <p>16 showing me that I don't have? No.</p> <p>17 Q. Okay. Do you know who</p> <p>18 Mr. Schiavo is?</p> <p>19 A. No.</p> <p>20 Q. Do you know whether he was a</p> <p>21 member of CVS's suspicious order monitoring</p> <p>22 team?</p> <p>23 A. No.</p> <p>24 Q. Do you know what his position</p>

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<p>1 at CVS was?</p> <p>2 A. No.</p> <p>3 Q. Do you know if he was deposed</p> <p>4 in this case?</p> <p>5 A. No.</p> <p>6 Q. Did you attempt to review any</p> <p>7 deposition testimony about that document that</p> <p>8 is excerpted in that exhibit?</p> <p>9 A. No.</p> <p>10 Q. How did you find that document?</p> <p>11 A. Through a search.</p> <p>12 Q. Who performed the search?</p> <p>13 A. I did or my staff did.</p> <p>14 Q. What did you do to confirm that</p> <p>15 the excerpted language from that document</p> <p>16 accurately reflected how CVS's suspicious</p> <p>17 order monitoring system operated?</p> <p>18 MS. CONROY: Objection.</p> <p>19 THE WITNESS: We looked for</p> <p>20 other documents around that document</p> <p>21 in the search.</p> <p>22 Q. (BY MR. HYNES) Did you find</p> <p>23 any?</p> <p>24 A. I don't think so.</p>	<p>1 Q. Are you --</p> <p>2 A. If you could show it to me.</p> <p>3 Q. Are you familiar --</p> <p>4 A. Could I finish? If you show it</p> <p>5 to me, I may be familiar with it.</p> <p>6 Q. Understood.</p> <p>7 A. I can't recall it by name.</p> <p>8 Q. Are you familiar with CVS's SOM</p> <p>9 policies?</p> <p>10 A. Not in detail --</p> <p>11 Q. Can you tell me --</p> <p>12 A. -- without looking at them.</p> <p>13 Q. Can you tell me what they said</p> <p>14 about how to perform due diligence on orders?</p> <p>15 A. Not without looking at them.</p> <p>16 Q. Are you familiar with what</p> <p>17 information CVS staff had available to them</p> <p>18 to do due diligence on flagged orders?</p> <p>19 A. Not without looking at the</p> <p>20 procedures, no.</p> <p>21 Q. Are you familiar with the micro</p> <p>22 strategy database?</p> <p>23 A. No.</p> <p>24 Q. The infomatic database?</p>
<p style="text-align: center;">Page 760</p> <p>1 Q. Okay. Are you familiar with</p> <p>2 CVS's suspicious order monitoring system?</p> <p>3 A. Not specifically, no.</p> <p>4 Q. So you're not familiar with the</p> <p>5 algorithms that were used to flag orders?</p> <p>6 A. Correct. Except to the extent</p> <p>7 that they're mentioned here.</p> <p>8 Q. So is that the only document</p> <p>9 you recall reviewing related to CVS's</p> <p>10 suspicious order monitoring system?</p> <p>11 A. No.</p> <p>12 Q. What documents did you review?</p> <p>13 A. I can't recall.</p> <p>14 Q. How many documents related to</p> <p>15 CVS's suspicious order monitoring system did</p> <p>16 you review?</p> <p>17 A. I can't recall.</p> <p>18 Q. What's your best guess?</p> <p>19 A. No guess.</p> <p>20 Q. Less than 100?</p> <p>21 A. No guess.</p> <p>22 Q. Are you familiar with the</p> <p>23 report called the "Item Review Report"?</p> <p>24 A. No. Not by name.</p>	<p style="text-align: center;">Page 762</p> <p>1 A. Not at -- not by memory.</p> <p>2 Q. The store metrics report?</p> <p>3 A. No.</p> <p>4 Q. Did you review any documents</p> <p>5 relating to training that CVS SOM team</p> <p>6 members received on SOM?</p> <p>7 A. I think so.</p> <p>8 Q. What can you tell me about the</p> <p>9 training they received?</p> <p>10 A. Nothing without looking at the</p> <p>11 documents.</p> <p>12 Q. Okay. Can you identify any</p> <p>13 suspicious orders of prescription opioids</p> <p>14 that CVS shipped to Summit or Cuyahoga</p> <p>15 County?</p> <p>16 A. No.</p> <p>17 Q. Do you even know what</p> <p>18 prescription opioids CVS shipped to Cuyahoga</p> <p>19 and Summit counties?</p> <p>20 A. I don't think I have a list of</p> <p>21 them in my possession, but I could find that</p> <p>22 out through the ARCOS database that we have</p> <p>23 access to.</p> <p>24 Q. Well, sitting here today,</p>

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<p>1 what's your best recollection?</p> <p>2 A. I don't have a recollection.</p> <p>3 Q. Do you know whether CVS shipped</p> <p>4 oxycodone to CVS retail pharmacies in Summit</p> <p>5 and Cuyahoga County?</p> <p>6 A. I do not have a recollection.</p> <p>7 Q. Do you know whether they</p> <p>8 shipped fentanyl?</p> <p>9 A. I do not know.</p> <p>10 Q. Do you know whether they</p> <p>11 shipped hydrocodone combination products?</p> <p>12 A. I do not know.</p> <p>13 Q. Do you know the names of the</p> <p>14 people who staffed CVS's SOM team?</p> <p>15 A. No.</p> <p>16 Q. Do you know who managed the</p> <p>17 team?</p> <p>18 A. No.</p> <p>19 Q. Do you know where the team was</p> <p>20 located?</p> <p>21 A. No.</p> <p>22 Q. Did you attempt to review</p> <p>23 depositions of any staff members who worked</p> <p>24 on CVS's SOM team?</p>	<p>1 it?</p> <p>2 A. Correct.</p> <p>3 Q. And it doesn't state when</p> <p>4 Rite Aid became a member of the venture, does</p> <p>5 it?</p> <p>6 A. Correct.</p> <p>7 Q. Do you have an opinion on when</p> <p>8 CVS or its subsidiaries became members of the</p> <p>9 venture?</p> <p>10 A. No.</p> <p>11 Q. Do you have an opinion of when</p> <p>12 Walmart became a member of the venture?</p> <p>13 A. No.</p> <p>14 Q. Same question for Rite Aid.</p> <p>15 A. Same answer.</p> <p>16 Q. Your report doesn't cite any</p> <p>17 evidence indicating that CVS agreed to become</p> <p>18 a member of the venture, does it?</p> <p>19 A. I'm not sure what you mean by</p> <p>20 that.</p> <p>21 Q. You don't cite any evidence or</p> <p>22 any conduct showing that CVS agreed,</p> <p>23 voluntarily agreed to become a member of the</p> <p>24 venture, do you?</p>
Page 764	Page 766
<p>1 A. No.</p> <p>2 Q. I want to talk about the</p> <p>3 venture that's discussed in your report.</p> <p>4 Your opinion states that -- or</p> <p>5 is your opinion that CVS joined the venture?</p> <p>6 Or was a member of the venture?</p> <p>7 A. Yes.</p> <p>8 Q. Which CVS entities in your</p> <p>9 opinion were a member of the venture?</p> <p>10 A. I didn't distinguish any. So.</p> <p>11 I'm talking about -- when I</p> <p>12 talk about CVS, I'm talking about the</p> <p>13 corporate parent. I didn't break it into</p> <p>14 subsidiaries.</p> <p>15 Q. So your opinion is not that CVS</p> <p>16 Indiana LLC was a member of the venture?</p> <p>17 A. My opinion is that CVS and its</p> <p>18 subsidiaries were a member of the venture.</p> <p>19 Q. Your report doesn't state when</p> <p>20 CVS and its subsidiaries became members of</p> <p>21 the venture, does it?</p> <p>22 A. Correct.</p> <p>23 Q. It also doesn't state when</p> <p>24 Walmart became a member of the venture, does</p>	<p>1 A. Well, they were members of the</p> <p>2 HDMA, and the HDMA was one of the</p> <p>3 organizations that was part of the venture.</p> <p>4 Q. Does your report cite any</p> <p>5 documents or testimony indicating that CVS</p> <p>6 was a member of HDMA?</p> <p>7 A. I think so. I think I have a</p> <p>8 list of members of the HDMA.</p> <p>9 Q. And that's your only basis for</p> <p>10 concluding that a CVS entity was a member of</p> <p>11 the venture?</p> <p>12 MS. CONROY: Objection.</p> <p>13 THE WITNESS: No. CVS did --</p> <p>14 No.</p> <p>15 (BY MR. HYNES) Okay. What</p> <p>16 other conduct do you believe CVS took -- or</p> <p>17 undertook as a member of the venture?</p> <p>18 A. CVS contributed to the</p> <p>19 overprescription of opioids in these two</p> <p>20 counties.</p> <p>21 Q. And what did it do to</p> <p>22 contribute to the overprescription of opioids</p> <p>23 in these two counties?</p> <p>24 A. It filled prescriptions for</p>

<p style="text-align: right;">Page 767</p> <p>1 those drugs.</p> <p>2 Q. Would you agree that filling</p> <p>3 prescriptions is part of the normal business</p> <p>4 activity for CVS?</p> <p>5 A. Yes.</p> <p>6 Q. Would you agree that it happens</p> <p>7 every day?</p> <p>8 A. Yes.</p> <p>9 Q. Would you agree that it may</p> <p>10 happen even with respect to prescriptions</p> <p>11 that you have written for your patients?</p> <p>12 A. Yes.</p> <p>13 Q. Would you agree that there is</p> <p>14 nothing inherently wrong with filling</p> <p>15 prescriptions for prescription opioids?</p> <p>16 A. Yes.</p> <p>17 Q. You testified earlier that you</p> <p>18 read the complaint in this case; right?</p> <p>19 A. Correct.</p> <p>20 Q. Are you familiar with</p> <p>21 plaintiffs' claims against CVS?</p> <p>22 A. I don't -- I haven't separated</p> <p>23 them out, no.</p> <p>24 Q. Are you aware that plaintiffs'</p>	<p style="text-align: right;">Page 769</p> <p>1 ability to get data all the way down to the</p> <p>2 patient level. So CVS had the capability,</p> <p>3 which they did not use, to determine which</p> <p>4 physicians were overprescribing and which</p> <p>5 patients were over -- being overprescribed.</p> <p>6 CVS failed to take action on it.</p> <p>7 Q. And how do you know CVS had</p> <p>8 access to that data?</p> <p>9 A. Because that data is</p> <p>10 available -- because, first of all, CVS</p> <p>11 participates in selling that data to IMS and</p> <p>12 other entities. So they certainly have data</p> <p>13 on what they sell.</p> <p>14 CVS can get data from IMS</p> <p>15 that's broader than just its own sales, so</p> <p>16 they can look at IMS data over the entirety</p> <p>17 of these two counties and determine how many</p> <p>18 prescriptions for opioids are going out the</p> <p>19 door. They can determine from their own data</p> <p>20 on their own patients how many of those</p> <p>21 patients are getting prescriptions from</p> <p>22 multiple pharmacies, multiple physicians.</p> <p>23 They can see which physicians are</p> <p>24 overprescribing from their pharmacy data</p>
<p style="text-align: right;">Page 768</p> <p>1 claims against CVS do not relate to its</p> <p>2 dispensing of prescription opioids?</p> <p>3 A. Yes.</p> <p>4 Q. So you know that its claims --</p> <p>5 plaintiffs' claims relate only to CVS's</p> <p>6 distribution of prescription opioids?</p> <p>7 A. Yes.</p> <p>8 Q. Is it -- besides joining HDMA</p> <p>9 and filling prescriptions for prescription</p> <p>10 opioids, are you aware of any -- or is it</p> <p>11 your opinion that CVS did anything else or</p> <p>12 took any other action in furtherance of the</p> <p>13 so-called venture?</p> <p>14 A. Yes.</p> <p>15 Q. What else?</p> <p>16 A. It remained silent as to the</p> <p>17 nature of the opioid epidemic, the</p> <p>18 overprescription of opioids and the addiction</p> <p>19 epidemic.</p> <p>20 Q. So --</p> <p>21 A. CVS failed to act on the</p> <p>22 information available to it about upstream</p> <p>23 orders, downstream sales, physician -- CVS,</p> <p>24 unlike some other distributors, had the</p>	<p style="text-align: right;">Page 770</p> <p>1 downstream.</p> <p>2 So while all of the</p> <p>3 distributors could do that and track orders</p> <p>4 right down to the pharmacy level out the</p> <p>5 door, CVS, because it was a vertically</p> <p>6 oriented distributor pharmacy operation, had</p> <p>7 more access to that data, more easily</p> <p>8 acquired, and more easily used than some of</p> <p>9 the distributors would have had to take it an</p> <p>10 extra step.</p> <p>11 Q. But none of those opinions are</p> <p>12 reflected in your report, are they?</p> <p>13 A. No, I think they are.</p> <p>14 Q. Where?</p> <p>15 A. I think the whole idea that</p> <p>16 the --</p> <p>17 Well, first of all, they had</p> <p>18 that general opinion that we went through</p> <p>19 before. That had any of the participants in</p> <p>20 the venture --</p> <p>21 Q. Sir, your opinion you just</p> <p>22 stated about CVS's failure to act based on</p> <p>23 information it had at its disposal is not</p> <p>24 stated in your report; is that right?</p>

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<p>1 MS. CONROY: Objection.</p> <p>2 Q. (BY MR. HYNES) That's a</p> <p>3 yes-or-no question.</p> <p>4 A. I answered it.</p> <p>5 Q. You --</p> <p>6 A. Your last question was where,</p> <p>7 okay?</p> <p>8 I answered that question</p> <p>9 before. You asked, and I said, "No, I think</p> <p>10 they are."</p> <p>11 Your next question was "Where"? I</p> <p>12 was answering the "where" question which</p> <p>13 you interrupted, which is perfectly --</p> <p>14 Q. Can you point me to the section</p> <p>15 number?</p> <p>16 A. -- which is perfectly fine. I</p> <p>17 have no problem with you interrupting my</p> <p>18 answer. That's what the judge ruled. It</p> <p>19 just means my answer is incomplete.</p> <p>20 Q. That's fine. Your answer is</p> <p>21 incomplete.</p> <p>22 Can you point me to a section</p> <p>23 or page number where that opinion is stated</p> <p>24 in your report?</p>	<p>1 to conduct occurring in Oklahoma?</p> <p>2 A. Yes.</p> <p>3 Q. So you're aware that it</p> <p>4 relates -- that it does not relate to conduct</p> <p>5 occurring in Cuyahoga or Summit County?</p> <p>6 MS. CONROY: Objection.</p> <p>7 THE WITNESS: Well, the</p> <p>8 citation's specific to Oklahoma.</p> <p>9 Q. (BY MR. HYNES) Okay.</p> <p>10 A. That's correct.</p> <p>11 Q. Are you aware the settlement</p> <p>12 relates to conduct occurring at CVS retail</p> <p>13 pharmacies?</p> <p>14 A. Yeah, let me look at it so I</p> <p>15 don't make any mistakes.</p> <p>16 MS. CONROY: What's the number,</p> <p>17 4.89?</p> <p>18 MR. HYNES: B.489.</p> <p>19 Q. (BY MR. HYNES) Sir, while</p> <p>20 we're looking for the document, I'll ask some</p> <p>21 questions. We're short on time.</p> <p>22 On the course of your --</p> <p>23 A. Do you want to withdraw the</p> <p>24 previous question?</p>
<p>1 A. The opinion -- I cannot without</p> <p>2 looking at the report give you the page</p> <p>3 number and the opinion number. I can tell</p> <p>4 you generally, for example, the opinion that</p> <p>5 I discussed --</p> <p>6 Q. I don't need to hear --</p> <p>7 That's fine.</p> <p>8 A. Okay. My opinion is</p> <p>9 incomplete.</p> <p>10 Q. That's fine.</p> <p>11 A. My answer is incomplete.</p> <p>12 Q. Sir, your opinion at</p> <p>13 Exhibit B.489 cites a DEA settlement CVS</p> <p>14 entered into on March 28, 2013. Is that</p> <p>15 correct?</p> <p>16 A. What opinion number is it?</p> <p>17 Q. Exhibit No. B.489.</p> <p>18 A. What page?</p> <p>19 Q. I'll just show it to you.</p> <p>20 A. That's correct.</p> <p>21 Q. Did you review that settlement</p> <p>22 agreement?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware that it relates</p>	<p>1 Q. Yeah. I'll go back to it.</p> <p>2 A. Do you want to withdraw it?</p> <p>3 Q. It's withdrawn.</p> <p>4 In the course of your work on</p> <p>5 this engagement, did you review any DEA</p> <p>6 settlements with CVS related to distribution</p> <p>7 of prescription opioids to Cuyahoga or Summit</p> <p>8 County?</p> <p>9 A. No.</p> <p>10 MR. HYNES: We're good, then.</p> <p>11 THE VIDEOGRAPHER: Off the</p> <p>12 record at 4:57.</p> <p>13 MR. HYNES: Pass the witness.</p> <p>14 (Recess taken, 4:56 p.m. to</p> <p>15 4:58 p.m.)</p> <p>16 THE VIDEOGRAPHER: We are back</p> <p>17 on the record at 4:59.</p> <p>18 EXAMINATION</p> <p>19 BY MS. MCENROE:</p> <p>20 Q. Dr. Egilman, I have very little</p> <p>21 time with you, so I'm going to try and just</p> <p>22 do some "yes" or "no" questions like you did</p> <p>23 with some of my colleagues earlier today.</p> <p>24 You're a medical doctor;</p>

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<p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And you testified earlier today</p> <p>4 or yesterday about a specific patient you had</p> <p>5 who was addicted to opioids to whom you</p> <p>6 prescribed opioids; is that correct?</p> <p>7 That's a yes-or-no question.</p> <p>8 MS. CONROY: While he's</p> <p>9 answering, could you identify who you</p> <p>10 represent on the record.</p> <p>11 MS. MCENROE: Yes,</p> <p>12 Elisa McEnroe from Morgan Lewis for</p> <p>13 Rite Aid.</p> <p>14 THE WITNESS: Yes.</p> <p>15 Q. (BY MS. MCENROE) If the</p> <p>16 pharmacy had refused to fill that</p> <p>17 prescription for that particular patient,</p> <p>18 could that have brought that patient harm?</p> <p>19 A. Anything is possible. I don't</p> <p>20 think so.</p> <p>21 Q. You wrote those prescriptions</p> <p>22 for that addicted patient because you said</p> <p>23 that he needed them because of his withdrawal</p> <p>24 symptoms; correct?</p>	<p>1 487.</p> <p>2 A. What page?</p> <p>3 Q. On page 135.</p> <p>4 A. Okay.</p> <p>5 Q. You'll see it says "Opinion."</p> <p>6 Rite Aid provided marketing services to</p> <p>7 Teva," and then there's a cite to</p> <p>8 Exhibit B487. Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Did I read that correctly?</p> <p>11 A. You did.</p> <p>12 (Whereupon, Deposition Exhibit</p> <p>13 Egilman 50, B.487, was marked for</p> <p>14 identification.)</p> <p>15 Q. (BY MS. MCENROE) We're handing</p> <p>16 you what's been marked as Exhibit 50 which is</p> <p>17 also Exhibit B487 from your report. You've</p> <p>18 been handed two folders; a green folder and a</p> <p>19 Redweld. Can you describe to me what's in</p> <p>20 front of you?</p> <p>21 MS. CONROY: Do you have a copy</p> <p>22 of the exhibit for me?</p> <p>23 MS. MCENROE: Oh, I do. Two,</p> <p>24 if you want.</p>
<p>1 A. No.</p> <p>2 Q. Okay. The record will stand</p> <p>3 with what you testified to yesterday.</p> <p>4 Today you're going to be asked</p> <p>5 some questions about Rite Aid of Maryland,</p> <p>6 Inc., doing business as Mid Atlanta Customer</p> <p>7 Support Center. I'm going to call that</p> <p>8 Rite Aid. Okay?</p> <p>9 A. Yes.</p> <p>10 Q. You understand that's the</p> <p>11 Rite Aid entity that's been sued in this</p> <p>12 litigation?</p> <p>13 A. I'll take your word for it.</p> <p>14 Q. Okay.</p> <p>15 A. I have no independent</p> <p>16 understanding of that.</p> <p>17 Q. Have you read the complaint in</p> <p>18 this case?</p> <p>19 A. Yes.</p> <p>20 Q. I'd like to direct your</p> <p>21 attention to Exhibit 1F. I think that's your</p> <p>22 report. You have it in front of you.</p> <p>23 A. I do.</p> <p>24 Q. And in particular to opinion</p>	<p>1 MS. CONROY: One is fine.</p> <p>2 MS. MCENROE: Great.</p> <p>3 Q. (BY MS. MCENROE) What is in</p> <p>4 front of you, Dr. Egilman, that was handed to</p> <p>5 you by plaintiffs' counsel?</p> <p>6 A. Same exhibits.</p> <p>7 Q. Is there anything different</p> <p>8 about the documents you were handed in those</p> <p>9 folders?</p> <p>10 A. It doesn't appear to be.</p> <p>11 Q. And do you have a copy of that</p> <p>12 exhibit for which you have handwriting or</p> <p>13 sticky notes like you described yesterday in</p> <p>14 the box that you have brought with you?</p> <p>15 MS. CONROY: There are no notes</p> <p>16 or stickers on the document.</p> <p>17 MS. MCENROE: Great. Okay.</p> <p>18 Q. (BY MS. MCENROE) So that's the</p> <p>19 only exhibit you have with respect to opinion</p> <p>20 487 regarding Rite Aid; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Do you have any other opinions</p> <p>23 naming Rite Aid in your report?</p> <p>24 A. I don't recall.</p>

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<p>1 Q. If you had, would that have 2 been included in the material plaintiffs just 3 handed you?</p> <p>4 A. Not necessarily.</p> <p>5 Q. Would you expect that it would 6 have been?</p> <p>7 A. No.</p> <p>8 Q. Can you identify for me any 9 other single opinion that identifies Rite Aid 10 in your report as we sit here today?</p> <p>11 A. No.</p> <p>12 Q. Taking a look at the attachment 13 you have or the exhibit that you have for 14 opinion 487, you'll see that the top says 15 "Teva Fentanyl Patches IVR, Statement of 16 Work." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Did you read this 19 document before?</p> <p>20 A. Yes.</p> <p>21 Q. Did you pick this document out 22 of the database?</p> <p>23 A. Well, I picked it to be in the 24 report. I don't think I did the search that</p>	<p>1 Q. Do you have any other evidence 2 supporting your opinion that Rite Aid 3 provided marketing services to Teva?</p> <p>4 A. No.</p> <p>5 Q. You testified a little bit 6 earlier that each defendant in this case is 7 100% responsible for the opioid crisis; is 8 that correct?</p> <p>9 A. Yes.</p> <p>10 Q. So you're taking the opinion 11 that Rite Aid is 100% responsible for the 12 opioid crisis on the basis of one unsigned 13 contract; is that right?</p> <p>14 A. No.</p> <p>15 Q. What other evidence have you 16 provided with your report that says that 17 Rite Aid is responsible for 100% of the 18 opioid crisis?</p> <p>19 A. All of the evidence that I 20 provided in my report relates to what was 21 known or knowable by Rite Aid with respect to 22 the venture.</p> <p>23 Q. And that was true of yourself 24 at the same time; correct, Dr. Egilman?</p>
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<p>1 found the document.</p> <p>2 Q. Did you actually type the words 3 into your report, "Opinion. Rite Aid 4 provided marketing services to Teva"? Did 5 you type those words?</p> <p>6 A. I think so, yes.</p> <p>7 Q. Did you do that based on this 8 exhibit?</p> <p>9 A. Yes.</p> <p>10 Q. Did you do it based on anything 11 else?</p> <p>12 A. Not that I can recall.</p> <p>13 Q. Can you identify anything else 14 as we sit here today that you did that on 15 behalf of?</p> <p>16 A. No.</p> <p>17 Q. Take a look at the last page of 18 this document.</p> <p>19 A. Right.</p> <p>20 Q. It's unsigned; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Have you ever seen a signed 23 copy?</p> <p>24 A. No.</p>	<p>1 A. Let me just say my answer is 2 incomplete.</p> <p>3 Q. Fine. That's fine.</p> <p>4 A. Now you can interrupt and ask 5 the other question.</p> <p>6 Q. That's true of yourself as 7 well, right, just as much as it's true of 8 Rite Aid?</p> <p>9 MS. CONROY: Objection.</p> <p>10 THE WITNESS: Which is true?</p> <p>11 Q. (BY MS. MCENROE) The 12 information that you said was available to 13 Rite Aid was equally available to yourself to 14 make it 100 percent responsible for the 15 opioid crisis.</p> <p>16 A. No, it wasn't.</p> <p>17 Q. Do you know what, if any, 18 opioids Rite Aid distributed into Cuyahoga or 19 Summit counties?</p> <p>20 A. I don't know which ones they 21 distributed, no.</p> <p>22 Q. Do you know if they ever did 23 distribute opioids into Cuyahoga or Summit 24 County? For a fact?</p>

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	<p>1 A. For a fact? I assume they did.</p> <p>2 Q. You assume so, but do you know</p> <p>3 that?</p> <p>4 A. I haven't seen the data on</p> <p>5 their sales --</p> <p>6 Q. Okay.</p> <p>7 A. -- into the county.</p> <p>8 Q. Do you know --</p> <p>9 A. But if they didn't sell, I</p> <p>10 would assume you wouldn't be sitting there.</p> <p>11 It's an easy summary judgment motion.</p> <p>12 Q. So you testified earlier that</p> <p>13 you did not base your opinions on any</p> <p>14 assumptions; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. But you have made some</p> <p>17 assumptions at the very least; correct?</p> <p>18 A. Do you mean that last one?</p> <p>19 Q. Question withdrawn.</p> <p>20 A. That you -- that you're -- that</p> <p>21 Rite Aid is still in the case?</p> <p>22 Q. Well, I'm just trying --</p> <p>23 A. And I don't think that's --</p> <p>24 Q. I withdrew my question.</p>	<p>1 5:07 p.m.)</p> <p>2 THE VIDEOGRAPHER: We are back</p> <p>3 on the record at 5:08.</p> <p>4 EXAMINATION</p> <p>5 BY MS. FUMERTON:</p> <p>6 Q. Good afternoon, Dr. Egilman.</p> <p>7 My name is Tara Fumerton, and I represent</p> <p>8 Walmart in this litigation.</p> <p>9 A. Good afternoon.</p> <p>10 Q. Do you have your report in</p> <p>11 front of you?</p> <p>12 A. I do.</p> <p>13 Q. And could you please turn to</p> <p>14 page 134 of your report, and I'm going to</p> <p>15 focus you on opinion 7.480.</p> <p>16 A. Okay.</p> <p>17 Q. And so opinion 7.480 is that,</p> <p>18 quote, Walmart helped Actavis market opioids.</p> <p>19 End quote; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And this is your only</p> <p>22 Walmart-specific opinion in your report;</p> <p>23 correct?</p> <p>24 A. I don't know.</p>
	<p>1 There's no question pending.</p> <p>2 I just want to understand your</p> <p>3 knowledge base for my client Rite Aid, and it</p> <p>4 seems to extend just as one unsigned</p> <p>5 contract. So I'm hoping that you can tell me</p> <p>6 a little bit more about what you know</p> <p>7 specifically about Rite Aid, if anything, and</p> <p>8 I'm not seeing anything else in your report.</p> <p>9 A. Well.</p> <p>10 Q. Is there anything else in your</p> <p>11 report --</p> <p>12 A. Is that a question?</p> <p>13 Q. Yeah. Is there anything else</p> <p>14 in your report about Rite Aid?</p> <p>15 A. That specifically mentioned</p> <p>16 Rite Aid?</p> <p>17 Q. Correct.</p> <p>18 A. I don't think so.</p> <p>19 MS. MCENROE: I have no further</p> <p>20 questions.</p> <p>21 Can we go off the record?</p> <p>22 THE VIDEOGRAPHER: Off the</p> <p>23 record at 5:06.</p> <p>24 (Recess taken, 5:06 p.m. to</p>	<p>1 Page 784</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>1 Q. How would you answer that</p> <p>2 question, then?</p> <p>3 In other words, you don't know</p> <p>4 the answer as to whether or not you have</p> <p>5 other Walmart-specific opinions in your</p> <p>6 report?</p> <p>7 A. For the Walmart specifically</p> <p>8 mentioned, you could search the report. I</p> <p>9 haven't done that by every company.</p> <p>10 Q. You haven't. So you have a</p> <p>11 folder back there that's specific to Walmart.</p> <p>12 Should we -- would that help you determine</p> <p>13 whether or not there are other</p> <p>14 Walmart-specific opinions?</p> <p>15 MS. CONROY: Objection.</p> <p>16 THE WITNESS: You know more</p> <p>17 than I do. Those are not my</p> <p>18 documents. Those are the plaintiff</p> <p>19 documents that they brought to the</p> <p>20 deposition. So I don't know if they</p> <p>21 have a folder named Walmart or not.</p> <p>22 Q. (BY MS. FUMERTON) Sitting</p> <p>23 here, can you identify any other</p> <p>24 Walmart-specific opinions in your report?</p>

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<p>1 A. No.</p> <p>2 Q. And to conclusively answer my</p> <p>3 question as to whether or not there were any</p> <p>4 other Walmart-specific questions -- or</p> <p>5 specific opinions in your report, you would</p> <p>6 need time to review your report; is that</p> <p>7 right?</p> <p>8 A. No. I'd need to do a search in</p> <p>9 a PDF.</p> <p>10 Q. And so if I did a search in the</p> <p>11 PDF and Walmart did not show up in any of the</p> <p>12 titles in your report, could we conclude that</p> <p>13 opinion 7.480 is the only opinion that is</p> <p>14 Walmart specific in your report?</p> <p>15 A. It's the only opinion that</p> <p>16 names Walmart in the opinion, yes.</p> <p>17 Q. So how would you do the search</p> <p>18 of the PDF to determine whether or not there</p> <p>19 were any other Walmart-specific opinions in</p> <p>20 your report?</p> <p>21 A. Well, I'd search it for Walmart</p> <p>22 first, and then there's a Walmart coding</p> <p>23 because Walmart documents may have been used</p> <p>24 for other opinions. And then you could do a</p>	<p>1 Q. Do you have a copy? I do have</p> <p>2 a copy. I didn't want to mark it as another</p> <p>3 exhibit, but I can do so if we need to.</p> <p>4 A. I've probably got it in this</p> <p>5 box here.</p> <p>6 Q. And I also just wanted to</p> <p>7 confirm that I think it's worthwhile to get</p> <p>8 that to make sure that your copy of</p> <p>9 Exhibit B.480 is the same that I have.</p> <p>10 So why don't we go ahead and</p> <p>11 just mark this, then, as an exhibit?</p> <p>12 (Whereupon, Deposition Exhibit</p> <p>13 Egilman 51, Opinion-Walmart helped</p> <p>14 Actavis Market Opioids, was marked for</p> <p>15 identification.)</p> <p>16 Q. (BY MS. FUMERTON) Dr. Egilman,</p> <p>17 is what we just marked as Exhibit 51 the same</p> <p>18 thing as Exhibit B.480 in your report?</p> <p>19 A. Yes.</p> <p>20 Q. And is Exhibit B.480 the best</p> <p>21 evidence that you saw to support your opinion</p> <p>22 that Walmart helped Actavis market opioids?</p> <p>23 A. Yes.</p> <p>24 Q. In fact, there was no other</p>
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<p>1 search, you know, whatever the code is,</p> <p>2 asterisk, and then find any other Walmart</p> <p>3 documents that were cited in the report.</p> <p>4 Q. So if there's any Walmart</p> <p>5 documents cited in the report, is it your</p> <p>6 testimony that that, then, is referring to a</p> <p>7 Walmart opinion?</p> <p>8 A. I don't know. I'd have to look</p> <p>9 at them.</p> <p>10 Q. So I'll go back to my original</p> <p>11 question. In order to determine whether</p> <p>12 there were any other Walmart-specific</p> <p>13 opinions in your report, you'd have to review</p> <p>14 not just the report but all of the documents?</p> <p>15 A. Yeah. The report is the report</p> <p>16 and the documents, correct.</p> <p>17 Q. All right?</p> <p>18 A. You'd have to read the whole</p> <p>19 thing.</p> <p>20 Q. Let's look at page 134 of your</p> <p>21 report. You cite Exhibit B.480 in support of</p> <p>22 your opinion that Walmart helped Actavis</p> <p>23 market opioids; correct?</p> <p>24 A. Right.</p>	<p>1 evidence that you relied on as the basis of</p> <p>2 your opinion 7.480; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Now, Exhibit B.480 is a</p> <p>5 PowerPoint slide deck dated May 2014 titled</p> <p>6 "Joint Business Planning" and was produced by</p> <p>7 ANDA; correct?</p> <p>8 A. Correct.</p> <p>9 Q. There are no references to</p> <p>10 marketing opioids in this document; correct?</p> <p>11 A. Not correct.</p> <p>12 Q. And where are there references</p> <p>13 to marketing opioids in this document?</p> <p>14 A. Bates No. 1126042.</p> <p>15 That's one place.</p> <p>16 Q. And --</p> <p>17 A. And then 1126043. And then</p> <p>18 1126049.</p> <p>19 [Document review.]</p> <p>20 Q. (BY MS. FUMERTON) I'm going</p> <p>21 to, just because I'm so short on time, stop</p> <p>22 you with those examples right now and we can</p> <p>23 discuss them. If we need to go to more, we</p> <p>24 can do so.</p>

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<p>1 A. Okay. Can I just make a record 2 that the answer is incomplete. 3 Q. Sure. So let's go back to 4 page 6042, which I think is the first 5 instance that you indicated referenced 6 marketing opioids; is that right? 7 A. Correct. 8 Q. And where do you see the words 9 "marketing" on this page? 10 A. The word "marketing" is not on 11 this page. 12 Q. And so nowhere in this page 13 does it discuss marketing opioids; correct? 14 MS. CONROY: Objection. 15 THE WITNESS: Not true. 16 Q. (BY MS. FUMERTON) Is it your 17 opinion that because this page references 18 sales of opioids that that is the same thing 19 as marketing opioids? 20 A. No, not exactly. 21 Q. So explain to me how this page 22 refers to marketing of opioids. 23 A. This says -- it says planned 24 unit growth to translate in sales and gross</p>	<p>1 Fiscal 2015, and that's indicating an 2 increase. So if you're pushing out more 3 sales to Walmart by Actavis, presumably 4 that's being done to increase Actavis' 5 profits. 6 Q. And so let me ask you -- 7 A. And of course if -- and 8 similarly, if Walmart is -- what goes -- what 9 gets pushed from Actavis to Walmart doesn't 10 get stuck in Walmart. It gets sold by 11 Walmart into the community. Otherwise there 12 would be a big backup of opioids at the 13 Walmart stores. 14 Q. In that lengthy explanation 15 that you just gave you did not once use the 16 term "market"; correct? Or "marketing"; 17 correct? 18 A. That's true. 19 Q. And in reaching your opinion, 20 based solely on the single document, that 21 Walmart helped Actavis market opioids, you 22 did not consider the testimony of the Walmart 23 employees who testified that Walmart did not 24 market opioids; correct?</p>
<p>1 profit, or GP, improvements. 2 And it indicates estimated 3 increases in sales, and it includes 4 specifically hydromorphone and buprenorphine 5 analogs as part of the drugs that are going 6 to increase gross profit. 7 Q. And whose gross profit is being 8 referred to there, do you know? 9 A. Well, it's a joint business 10 planning, so it appears to be both companies. 11 Q. And you're just basing that off 12 of the title of the document; correct? 13 A. That's true. I'm basing it on 14 the title of the document, and I think 15 there's other -- 16 That's not necessarily true. 17 I think there's other documents 18 in here that indicate increases in gross 19 profit that may segregate out who's 20 specifically -- 21 Yeah, for example, if you look 22 at page 6 of the document, 1126044. 23 Strategy one, products either 24 launched or have been pushed out to Walmart.</p>	<p>1 A. That's correct. 2 Q. And you also did not consider 3 in formulating your opinion the testimony of 4 Patsy Little, where she described these joint 5 business planning meetings to be a program 6 that was just in place for a couple of years 7 for the purpose of trying to get a lower cost 8 of goods and get supply on items that were 9 hard to supply in the market; correct? 10 A. Correct. 11 MS. FUMERTON: So I'm going to 12 pass the witness at this time. I 13 think that -- I want to put on the 14 record an objection that I think the 15 time that has been allocated to each 16 defendant has been woefully deficient, 17 given the lengthy opinions and the 18 fact that specifically to Walmart, the 19 witness was unable to answer the 20 question as to whether or not there 21 were any other additional 22 Walmart-specific opinions in his 23 report. But given the amount of time 24 that we've been allocated, I have to</p>

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<p>1 pass the witness so that other 2 defendants can ask questions as well. 3 Let's go off the record. 4 MS. CONROY: No, I'm not ready 5 to go off the record. Objection, the 6 plaintiffs did not allocate the time 7 among the defendants. You did that 8 yourselves. So we are not responsible 9 for that.</p> <p>10 MS. FUMERTON: So are you 11 agreeing to expand the deposition 12 beyond 14 hours?</p> <p>13 MS. CONROY: Absolutely not. 14 You go to the Court and seek an 15 additional -- any additional time. 16 But we did not allocate time among the 17 defendant or determine how much time 18 Walmart would have versus another 19 defendant.</p> <p>20 MS. FUMERTON: And my objection 21 stands, and let's go off the record.</p> <p>22 THE VIDEOGRAPHER: Off the 23 record. 5:21.</p> <p>24 (Recess taken, 5:20 p.m. to</p>	<p>1 analysis regarding how you reached that 2 opinion; correct? 3 A. Can I see B12? 4 MS. CONROY: Sure. 5 MR. PODOLL: That's B12 there 6 if you want a copy, here's a copy. 7 MS. CONROY: Thank you. 8 THE WITNESS: Well, I provide 9 the excerpt of a document that 10 basically -- that says that. 11 Q. (BY MR. PODOLL) Beyond the 12 excerpt of the document that you cite in B12, 13 you don't provide any written analysis 14 regarding how you came to that opinion; 15 right? 16 A. Correct. 17 Q. You don't provide any written 18 analysis regarding how the cited document 19 supports your opinion; correct? 20 A. No. I've got all kinds of 21 arrows showing you what new document supports 22 the opinion. 23 Q. That was my next question. 24 Are the arrows in the opinion</p>
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<p>1 5:21 p.m.) 2 THE VIDEOGRAPHER: We are back 3 on the record at 5:22. 4 THE WITNESS: I have to start 5 with the plaintiff time. 6 The opinion that I wrote for 7 453 was incorrect. The opinion should 8 be "Ohio Medicaid had its own 9 formulary committee." 10 Off plaintiff time.</p> <p>11 EXAMINATION</p> <p>12 BY MR. PODOLL:</p> <p>13 Q. Good afternoon, Dr. Egilman.</p> <p>14 Josh Podoll on behalf of Cardinal Health from 15 Williams and Connolly.</p> <p>16 A. Oh, good afternoon.</p> <p>17 Q. Sir, could you turn to page 63 18 of your report?</p> <p>19 A. Sure.</p> <p>20 Q. You opine in opinion 7.12 that 21 "Cardinal Health failed to take action for 22 suspicious orders"; correct?</p> <p>23 A. Correct.</p> <p>24 Q. You don't provide any written</p>	<p>1 the portions of this document that you 2 believe support your opinion? 3 A. They're the -- the whole 4 document supports the opinion. 5 MS. CONROY: It's the rest of 6 that. 7 THE WITNESS: The whole 8 document supports the opinion, but 9 certainly the arrows point to the most 10 salient parts of the document that 11 support the opinion. 12 Q. (BY MR. PODOLL) Aside from the 13 documents excerpted in B12, you cite no other 14 documents to support your opinion that 15 Cardinal failed to take action for suspicious 16 orders; correct? 17 A. In this opinion, you mean? 18 Q. Correct. 19 A. That's correct. But there are, 20 I think, other documents including Cardinal's 21 fines paid, et cetera, that are cited 22 elsewhere. 23 MR. PODOLL: Move to strike 24 everything after -- oh, our live feed</p>

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<p>1 is gone. Move to strike at --</p> <p>2 Let's go off the record and fix</p> <p>3 the live feed.</p> <p>4 THE VIDEOGRAPHER: Off the</p> <p>5 record at 5:25.</p> <p>6 (Recess taken, 5:25 p.m. to</p> <p>7 5:25 p.m.)</p> <p>8 THE VIDEOGRAPHER: We are back</p> <p>9 on the record at 5:27.</p> <p>10 MR. PODOLL: Move to strike</p> <p>11 everything in the prior answer after</p> <p>12 "That's correct."</p> <p>13 Q. (BY MR. PODOLL) You cite no</p> <p>14 deposition testimony to support the opinion</p> <p>15 that Cardinal failed to take action for</p> <p>16 suspicious orders; correct?</p> <p>17 A. Correct.</p> <p>18 Q. You don't say what methodology</p> <p>19 you used to reach the opinion that Cardinal</p> <p>20 failed to take action for suspicious orders;</p> <p>21 correct?</p> <p>22 A. No.</p> <p>23 Q. In Exhibit B12, you don't say,</p> <p>24 in writing, what methodology you use to</p>	<p>1 Q. Do you know what her</p> <p>2 responsibilities were with respect to</p> <p>3 Cardinal's suspicious order monitoring system</p> <p>4 at the time of this e-mail?</p> <p>5 A. I don't know what her job</p> <p>6 description was at the time of this e-mail,</p> <p>7 no.</p> <p>8 Q. Did you even try and find out?</p> <p>9 A. I don't think there were any</p> <p>10 job descriptions or personnel files in any of</p> <p>11 the production.</p> <p>12 Q. Did you ask to read her</p> <p>13 deposition?</p> <p>14 A. No.</p> <p>15 Q. Did you read her deposition?</p> <p>16 A. No.</p> <p>17 Q. The excerpts cited in</p> <p>18 Exhibit B12 refer to a K-Mart store.</p> <p>19 Do you see that?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know where that K-Mart</p> <p>22 store is located?</p> <p>23 A. No.</p> <p>24 Q. Do you know what that K-Mart</p>
<p style="text-align: center;">Page 800</p> <p>1 support the opinion that Cardinal failed to</p> <p>2 take action for suspicious orders; correct?</p> <p>3 A. Correct.</p> <p>4 Q. You created the -- what is</p> <p>5 Exhibit B12 to your report; correct?</p> <p>6 A. Correct.</p> <p>7 Q. You did that by copying and</p> <p>8 pasting from a document?</p> <p>9 MS. CONROY: Objection.</p> <p>10 Q. (BY MR. PODOLL) From two</p> <p>11 documents?</p> <p>12 A. And putting the box and arrows</p> <p>13 on it.</p> <p>14 Q. Fair enough. And putting in</p> <p>15 boxes and arrows.</p> <p>16 The first box that I see on the</p> <p>17 page is around a quotation under the</p> <p>18 signature block of Kimberly Anna-Soisson; is</p> <p>19 that right?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know who Kimberly</p> <p>22 Anna-Soisson is?</p> <p>23 A. At the time she was the manager</p> <p>24 of regulatory management.</p>	<p style="text-align: center;">Page 802</p> <p>1 store's thresholds are?</p> <p>2 A. No.</p> <p>3 Q. Exhibit B12 does not mention</p> <p>4 any specific order of opioids; correct?</p> <p>5 I'll withdraw the question.</p> <p>6 Do you know whether Cardinal</p> <p>7 today has a suspicious order monitoring</p> <p>8 system?</p> <p>9 A. Yes, they do.</p> <p>10 Q. Do you know when that system</p> <p>11 was put in place?</p> <p>12 A. The current system?</p> <p>13 Q. Yes.</p> <p>14 A. No, I do not.</p> <p>15 Q. Do you know when any suspicious</p> <p>16 order monitoring system was put in place for</p> <p>17 Cardinal Health?</p> <p>18 A. Sometime after 2007, 2008.</p> <p>19 Q. Do you know whether Cardinal</p> <p>20 Health had a suspicious order monitoring</p> <p>21 system before 2007 or 2008?</p> <p>22 A. Not the one that was effective.</p> <p>23 Maybe a paper program.</p> <p>24 MR. PODOLL: Move to strike.</p>

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<p>1 Q. (BY MR. PODOLL) Do you know 2 whether Cardinal Health had any system to 3 monitor suspicious orders before 2007 and 4 2008, "yes" or "no"?</p> <p>5 A. Not a functioning system.</p> <p>6 Q. Is it your testimony that 7 Cardinal Health had no system to monitor 8 suspicious orders before 2007 or 2008?</p> <p>9 A. No.</p> <p>10 Q. Is it your testimony that 11 Cardinal Health did have a system to monitor 12 suspicious orders before 2007 or 2008?</p> <p>13 A. Yes. Not a functioning system.</p> <p>14 MR. PODOLL: Move to strike 15 everything after "Yes."</p> <p>16 Q. (BY MR. PODOLL) Do you know 17 how Cardinal Health flagged suspicious orders 18 at any time?</p> <p>19 A. They had a baseline, and if you 20 went over the baseline by a certain amount, 21 they get a flagged order.</p> <p>22 Q. Do you know what criteria 23 Cardinal Health used to set that baseline?</p> <p>24 A. Well, that's changed over time,</p>	<p>1 direct supervisory responsibility for 2 Cardinal Health's suspicious order monitoring 3 system in 2012?</p> <p>4 Strike that.</p> <p>5 Do you know which Cardinal 6 Health employee had day-to-day responsibility 7 for Cardinal Health's suspicious order 8 monitoring system in 2012?</p> <p>9 A. No.</p> <p>10 Can we stop for a second 11 because mine is not working?</p> <p>12 Q. Yes. Let's go off the record.</p> <p>13 THE VIDEOGRAPHER: Off the 14 record at 5:32.</p> <p>15 (Recess taken, 5:31 p.m. to 16 5:32 p.m.)</p> <p>17 THE VIDEOGRAPHER: We are back 18 on the record at 5:33.</p> <p>19 Q. (BY MR. PODOLL) Do you know 20 which Cardinal Health employee had day-to-day 21 responsibility for Cardinal Health's 22 suspicious order monitoring system in 2016?</p> <p>23 A. No.</p> <p>24 Q. Do you know how many employees</p>
Page 804	Page 806
<p>1 but the answer is I don't recall it for any 2 particular point in time.</p> <p>3 Q. Do you know who was --</p> <p>4 MS. CONROY: There are 5 handwritten notes on the exhibit that 6 you -- that are already marked as 7 Exhibit 28.</p> <p>8 MR. PODOLL: Thank you, 9 Counsel. Could I see that?</p> <p>10 THE WITNESS: And there's 11 actually new stuff in this one.</p> <p>12 It's the Brown alumni folder.</p> <p>13 MR. PODOLL: All right. I am 14 going to reserve some time to deal 15 with this, but I'm going to keep going 16 for now. Thank you, Counsel.</p> <p>17 MS. CONROY: Let me put it back 18 in the exhibit, then.</p> <p>19 MR. PODOLL: I appreciate it.</p> <p>20 Q. (BY MR. PODOLL) Do you know 21 who was responsible for Cardinal Health's 22 suspicious order monitoring system in 2012?</p> <p>23 A. The CEO.</p> <p>24 Q. Do you know which employee had</p>	<p>1 had day-to-day responsibility -- how many 2 Cardinal Health employees had day-to-day 3 responsibility for suspicious order 4 monitoring at any time?</p> <p>5 A. No.</p> <p>6 Q. Did you review the deposition 7 testimony of Cardinal Health employees who 8 were responsible day to day for suspicious 9 order monitoring?</p> <p>10 A. No.</p> <p>11 Q. Did you review the deposition 12 testimony of any Cardinal Health employees?</p> <p>13 A. No.</p> <p>14 Q. I'd like you to turn to 15 page 106 of your report. And tell me when 16 you're there.</p> <p>17 A. I am there.</p> <p>18 Q. Your opinion 7.299 is "The 19 wholesale or performance agreement between 20 Purdue and Cardinal was a concerted action to 21 sell and promote opioids."</p> <p>22 Is that right?</p> <p>23 A. Correct.</p> <p>24 Q. Your support for that is</p>

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<p>1 Exhibit B299; right?</p> <p>2 Opinion B 299; correct? Which</p> <p>3 I am handing you.</p> <p>4 A. Right.</p> <p>5 Can you hand me the whole Bates</p> <p>6 number document?</p> <p>7 Q. Sure. Here is the entire</p> <p>8 document.</p> <p>9 A. Okay. Great. Thanks.</p> <p>10 I've got the whole thing.</p> <p>11 Very good.</p> <p>12 Brown alumni have good lawyers.</p> <p>13 Q. I wish I'd gone to Brown. I</p> <p>14 went to a rival school.</p> <p>15 A. No problem.</p> <p>16 He's on the Brown board of</p> <p>17 trustees. President of Cardinal.</p> <p>18 Q. You're not a lawyer; correct?</p> <p>19 A. Correct.</p> <p>20 I don't play one on TV.</p> <p>21 Q. You're not offering a legal</p> <p>22 opinion related to the meaning of concerted</p> <p>23 action; correct?</p> <p>24 A. Correct.</p>	<p>1 A. No.</p> <p>2 Q. Do you know the terms of any</p> <p>3 agreements between Purdue and Cardinal Health</p> <p>4 that were in fact entered?</p> <p>5 A. Well, there are other marketing</p> <p>6 agreement documents, as I recall, that are</p> <p>7 elsewhere in the report. And I think they're</p> <p>8 Cardinal-Purdue documents.</p> <p>9 Q. Can you point me, sitting here</p> <p>10 today, to the terms of any -- of any</p> <p>11 distributor performance agreement between</p> <p>12 Cardinal Health and Purdue?</p> <p>13 A. No.</p> <p>14 Q. Do you have any knowledge about</p> <p>15 this agreement that I couldn't get by</p> <p>16 performing the searches you performed and</p> <p>17 reading the documents you read?</p> <p>18 A. No.</p> <p>19 MR. PODOLL: All right. Let's</p> <p>20 go off the record.</p> <p>21 THE VIDEOGRAPHER: Off the</p> <p>22 record at 5:38.</p> <p>23 (Recess taken, 5:37 p.m. to</p> <p>24 5:37 p.m.)</p>
<p style="text-align: center;">Page 808</p> <p>1 Q. You've never consulted with</p> <p>2 respect -- with an industry -- with Cardinal</p> <p>3 Health, Purdue, or any other distributor or</p> <p>4 manufacturer with respect to wholesaler</p> <p>5 performance agreements; correct?</p> <p>6 A. Correct.</p> <p>7 Q. The excerpt from the document</p> <p>8 that -- your opinion B99 doesn't mention</p> <p>9 opioids, does it?</p> <p>10 Withdrawn.</p> <p>11 I'd like to point you to the</p> <p>12 sentence above the key terms that you've</p> <p>13 boxed in red. Are you there?</p> <p>14 A. Correct.</p> <p>15 Q. That sentence says: Set forth</p> <p>16 below are the key proposed financial terms</p> <p>17 that may form the basis of any future</p> <p>18 distributor agreements between the parties.</p> <p>19 Open parenthesis, collectively, quote, term</p> <p>20 sheet, closed quote, closed parenthesis.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know whether any such</p> <p>24 agreements in fact were entered?</p>	<p style="text-align: center;">Page 810</p> <p>1 MR. PODOLL: I just want to</p> <p>2 make the record that we object to the</p> <p>3 amount of time allotted for this</p> <p>4 deposition. So we can just note that</p> <p>5 on the stenographic record.</p> <p>6 THE WITNESS: I just say,</p> <p>7 anyone's free to call me up anytime</p> <p>8 you want. Ask me any questions you</p> <p>9 want. Chat any time.</p> <p>10 MR. PODOLL: Appreciate it.</p> <p>11 THE WITNESS: My pleasure.</p> <p>12 (Whereupon, Deposition Exhibit</p> <p>13 Egilman 52, Opinion-Ohio Medicaid</p> <p>14 depended on the PBMs for formulary</p> <p>15 drug selection/handwritten notations</p> <p>16 "had its own committee," was marked</p> <p>17 for identification.)</p> <p>18 (Recess taken, 5:39 p.m. to</p> <p>19 5:40.</p> <p>20 THE VIDEOGRAPHER: We are back</p> <p>21 on the record at 5:40:</p> <p>22 MS. CONROY: This is Jayne</p> <p>23 Conroy. We're going to be marking as</p> <p>24 Exhibit 52, opinion B453, which was</p>

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<p>1 corrected on the record by 2 Dr. Egilman.</p> <p style="text-align: center;">EXAMINATION</p> <p>4 BY MS. FINGER:</p> <p>5 Q. Dr. Egilman, my name is Anna 6 Finger. I'm at Locke Lord, and I represent 7 Henry Schein, Incorporated and Henry Schein 8 Medical Facility, Incorporated. I'm going to 9 refer to them herein as Henry Schein or the 10 Henry Schein defendants. Is that okay?</p> <p>11 A. Sure.</p> <p>12 Q. And so you had access to review 13 all documents produced by Henry Schein in 14 this litigation; correct?</p> <p>15 A. Right. I think they came in 16 late, though. So I didn't have that much 17 time on those documents.</p> <p>18 Q. Okay. But you had access to 19 all of their documents; correct?</p> <p>20 A. Right. At some point in time.</p> <p>21 Q. Okay. And you do not list any 22 opinions in your report that specifically 23 mention Henry Schein; correct?</p> <p>24 A. Correct.</p>	<p>1 A. Or in person. 2 Q. Or in person? 3 A. If you want to buy me dinner, 4 I'd be glad to go to dinner with you. 5 Q. Okay. 6 A. Particularly if it's one of the 7 Italian restaurants in Federal Hill. Or one 8 of my staff seems to like Chicken McNuggets, 9 but I have a more expensive palate than she 10 does. 11 Q. Okay. And -- 12 A. And yet I would be glad to talk 13 to you without. And I don't drink, so that's 14 a cheap date in terms of alcohol. 15 Q. Would it be all right if we 16 brought a court reporter to the dinner? 17 A. I'd prefer not. 18 Q. Okay. But that's something we 19 could talk about, then? 20 A. Correct. 21 Q. So your objection is just to a 22 formal notice of deposition? Is that -- 23 A. My objection is to a formal 24 proceeding that --</p>
Page 812	Page 814
<p>1 Q. And Henry Schein is not 2 specifically identified as a member in what 3 you call "the venture"; correct?</p> <p>4 A. Correct.</p> <p>5 MS. FINGER: That's all I have. 6 I'll pass the witness.</p> <p>7 THE WITNESS: Great job.</p> <p style="text-align: center;">EXAMINATION</p> <p>9 BY MS. SAULINO:</p> <p>10 Q. Dr. Egilman, it's Jennifer 11 Saulino for McKesson again. I'm back. 12 A. Welcome back. 13 Q. Thank you. 14 So first, because you've kindly 15 made this offer to us several times, I'd like 16 to ask you, on the record, whether you are 17 willing to sit for additional hours of the 18 deposition so that all of the defendants can 19 have sufficient time to explore your numerous 20 opinions.</p> <p>21 A. No. Unless ordered by the 22 judge.</p> <p>23 Q. Okay. So you are only willing 24 to talk by telephone with us?</p>	<p>1 I don't know if you know this 2 or not, but I've been here for about 14 hours 3 straight, and -- well, I've enjoyed myself. 4 It is a little bit tiring and stressful. And 5 so I prefer a more informal setting and 6 conversation and a back-and-forth. 7 This involves a question and an 8 answer, unidirectional and not a discussion. 9 So I think discussions are 10 generally more fruitful in terms of figuring 11 out what really is going on, what my opinions 12 really are, et cetera. 13 But, you know, that's just -- 14 that's my view about how things work. 15 Q. You'd agree with me, Doctor, 16 wouldn't you, that we just haven't had 17 sufficient time to explore what's really 18 going on with your opinions and what your 19 opinions really are? 20 A. No. 21 MS. CONROY: Objection. 22 THE WITNESS: I think you had 23 plenty of time to do that. I don't 24 think you came quite prepared to do</p>

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1 it, but you had plenty of time to do 2 it. 3 Q. (BY MS. SAULINO) You'd agree 4 with me that we have not discussed every 5 single one of your 490 opinions in the last 6 two days, have we? 7 A. Not specifically, correct. 8 Q. You'd also agree with me, 9 Doctor, that unless specifically referenced 10 in an opinion, you have not reviewed 11 deposition testimony for any particular 12 opinion, unless it's specifically referenced 13 in your -- in your report. 14 A. No. 15 MS. CONROY: Objection. 16 Q. (BY MS. SAULINO) You would 17 agree with me, however, that there's no way 18 for us to know what deposition testimony you 19 may have reviewed for any particular opinion 20 unless you cite it? 21 MS. CONROY: Objection. 22 THE WITNESS: No. 23 Q. (BY MS. SAULINO) There is a 24 way for us to know?	1 found out what depositions I reviewed before 2 the deposition. And there was. You could do 3 a notice of deposition. You could make that 4 request, and I would have complied with that 5 request. 6 You didn't do that. 7 Q. You would agree with me that 8 that is not anywhere listed in your report 9 except for particular opinions that do -- a 10 few particular opinions that do cite 11 depositions; right? 12 A. The "no" there is depositions I 13 reviewed? Correct. The question is 14 ambiguous. I just cleared it up in my 15 answer. 16 Q. All right. Dr. Egilman, just 17 so we're clear, on the record, you would 18 agree with me that there is nowhere in your 19 report where you have listed with respect to 20 any particular opinion that a deposition was 21 something that you reviewed for that opinion 22 except for the few opinions where you do cite 23 to a deposition. Right? 24 A. That's correct.
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1 A. Well, there was a way for you 2 to know. It's called a depo notice. The 3 depo notice could include a request for me to 4 give you a list of all the depositions I 5 reviewed. You didn't do that. So I didn't 6 bring the list of all of the depositions I 7 reviewed because you didn't ask for it. 8 Q. Well, Doctor -- 9 A. I did bring lot of other 10 things, but I didn't bring that. 11 Q. Dr. Egilman, in fact, in your 12 report you say that you reviewed all of the 13 depositions. 14 A. No, I don't. I say I reviewed 15 depositions. I didn't say all of the 16 depositions. 17 Q. Are you now agreeing to provide 18 a list of each deposition that you reviewed 19 with respect to each opinion? 20 A. No. I'm not agreeing to 21 anything. 22 Q. Okay. And you would agree -- 23 A. You asked a different question. 24 You asked if there was a way you could have	1 Q. Okay. And you would agree with 2 me, Dr. Egilman, that in none of your 3 individual opinions do you provide specific 4 information for that opinion about how you 5 retrieved the document or documents that you 6 list as support for that opinion; right? 7 A. That's correct. I didn't give 8 you the complete trail of iterative searches 9 for each document. 10 Q. And you would agree with me, 11 that in none of your individual opinions do 12 you provide specific information about how 13 you determined what constituted the best 14 evidence for that particular opinion; right? 15 A. Correct. It's the best 16 evidence that I could find that supported the 17 opinion. 18 Q. Okay. Just so I make sure I 19 understand what you're saying, the evidence 20 that you provide in support of any particular 21 opinion is your best evidence for that 22 opinion? 23 A. It's the best evidence -- 24 Well, a lot of the opinions

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<p>1 relate to each other. So the report has to 2 be taken as a -- as a package. And we've 3 gone through this over the past two days, and 4 I --</p> <p>5 Q. I know. 6 A. -- I've said this many times. 7 So there are opinions that relate to each 8 other that support each other. So for any 9 particular opinion, there's other -- 10 generally other opinions that support that 11 opinion.</p> <p>12 Q. And as you and I have discussed 13 previously, you didn't provide us any 14 cross-referencing for those opinions that 15 support each other; right?</p> <p>16 A. That's correct. You'd have to 17 read the whole report.</p> <p>18 Q. And figure it out for 19 ourselves; right?</p> <p>20 MS. CONROY: Objection.</p> <p>21 THE WITNESS: Well, I think -- 22 that's correct. You would have to 23 read and understand the report.</p> <p>24 Q. (BY MS. SAULINO) Okay. But</p>	<p>1 Q. Okay. So, Doctor, in -- you 2 recall that in 2013, you presented at an FDA 3 public hearing on chronic opioid therapy? 4 A. I do. 5 Q. And that was an opportunity to 6 reach doctors, scientists, FDA officials and 7 even the public? 8 A. Well, some of them, yes. 9 Q. At no point during that 10 presentation did you sound the alarm about 11 the role of distributors or pharmacies in the 12 opioid epidemic, did you? 13 A. That's correct. 14 Q. You've also served as an expert 15 in litigation involving opioids; right? 16 A. Correct. 17 Q. You've written expert reports 18 and you've given depositions; right? 19 A. Correct. 20 Q. But until you were retained as 21 an expert in this case, you never offered an 22 opinion that any distributors' or pharmacies' 23 marketing led to the abuse or misuse of any 24 opioid medication; right?</p>
<p style="text-align: center;">Page 820</p> <p>1 you did not provide us with any documentation 2 about which opinions you believe support one 3 another; right?</p> <p>4 Would you like me to add the 5 word "specifically"? Would that help?</p> <p>6 A. Yeah, sure. If you add 7 "specific," I can give you an easier answer.</p> <p>8 Q. Okay.</p> <p>9 A. That's a yes.</p> <p>10 Q. Okay.</p> <p>11 A. Can we just take a quick break?</p> <p>12 Q. Sure. We only have a couple of 13 minutes left.</p> <p>14 A. How many have you got?</p> <p>15 Q. Like five.</p> <p>16 A. Go ahead.</p> <p>17 Q. Okay. I mean, if you need a 18 break, Doctor.</p> <p>19 A. I understand. Go ahead.</p> <p>20 It was a smaller cup of coffee.</p> <p>21 Q. Okay.</p> <p>22 A. If it was another tall, okay?</p> <p>23 But I can give you another five with a 24 smaller cup.</p>	<p style="text-align: center;">Page 822</p> <p>1 A. Until I saw the documents that 2 were produced in this litigation, correct. 3 Q. In 2006 you published a book 4 chapter about anti-warnings that contained a 5 discussion about opioids; right? 6 A. Correct. 7 Q. And you did not place any blame 8 on any distributor or any pharmacy for what 9 you called the opioid public health problem; 10 right? 11 A. Correct. 12 MS. SAULINO: So, Doctor, right 13 now I'd like to put on the record a 14 standing objection on behalf of all of 15 the defendants in this litigation, 16 that we were limited to 14 hours total 17 of time. And while we did allocate 18 that time amongst ourselves, it was 19 not sufficient time for us 20 collectively to each sufficiently 21 explore all of your opinions, all 490 22 of your opinions in your report, plus 23 the additional bases that you've 24 provided to us over the last couple of</p>

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<p>1 days.</p> <p>2 And so on behalf of all</p> <p>3 defendants, we object to the time</p> <p>4 that's been allotted, and we'd like to</p> <p>5 keep this deposition open in order to</p> <p>6 have sufficient time to explore your</p> <p>7 opinions so that we can understand all</p> <p>8 of the many, many bases and your</p> <p>9 criteria for your opinions that you</p> <p>10 yourself have admitted during this</p> <p>11 deposition is not specifically listed</p> <p>12 anywhere in your report.</p> <p>13 THE WITNESS: Is that a</p> <p>14 question?</p> <p>15 Was that a question?</p> <p>16 MS. SAULINO: No. It was not.</p> <p>17 Further, Dr. Egilman, we will</p> <p>18 note for the record that you have</p> <p>19 26 boxes behind you filled with</p> <p>20 materials. You came with additional</p> <p>21 bases that you evidently created the</p> <p>22 night before the deposition that are</p> <p>23 stacked in front of us and are now</p> <p>24 marked as Exhibit 28. We were given</p>	<p>1 entirety -- plus Exhibit 28, which is</p> <p>2 the folders in front of you -- is the</p> <p>3 entirety of things that you have</p> <p>4 written notes on in order to bring to</p> <p>5 the deposition?</p> <p>6 MS. CONROY: It's the opposite.</p> <p>7 28, and then 26 are the folders here.</p> <p>8 MS. SAULINO: I apologize.</p> <p>9 Thank you for correcting that.</p> <p>10 But those two exhibits are all</p> <p>11 of what you wrote notes on in order to</p> <p>12 bring to this deposition?</p> <p>13 THE WITNESS: No. They were</p> <p>14 all I wrote notes on.</p> <p>15 It had nothing to do with</p> <p>16 bringing it to the deposition. I</p> <p>17 wrote notes on them, and I brought</p> <p>18 them to the deposition because I</p> <p>19 thought it would facilitate the</p> <p>20 deposition.</p> <p>21 Q. (BY MS. SAULINO) Did you bring</p> <p>22 any --</p> <p>23 A. Make it go fast.</p> <p>24 Q. Did you bring anything else</p>
<p>1 no notice of the additional bases and</p> <p>2 opinions, unless and until we happened</p> <p>3 upon them when we were asking</p> <p>4 questions.</p> <p>5 And so on behalf of all of the</p> <p>6 defendants, I will also object to that</p> <p>7 issue.</p> <p>8 THE WITNESS: Is that a</p> <p>9 question for me?</p> <p>10 MS. SAULINO: No, it is not,</p> <p>11 Dr. Egilman.</p> <p>12 THE WITNESS: So are we done,</p> <p>13 then?</p> <p>14 MS. SAULINO: If you can give</p> <p>15 me one moment, Dr. Egilman.</p> <p>16 MS. FUMERTON: Can we just mark</p> <p>17 those boxes?</p> <p>18 MS. SAULINO: The court</p> <p>19 reporter is going to kill us.</p> <p>20 I do want to -- sorry, are we</p> <p>21 back on the record?</p> <p>22 I do want to confirm,</p> <p>23 Dr. Egilman, that the box that we</p> <p>24 marked as Exhibit 26 is the</p>	<p>1 that you thought would facilitate the</p> <p>2 deposition that maybe you didn't write notes</p> <p>3 on that we haven't marked as an exhibit?</p> <p>4 A. Yeah, the only thing you didn't</p> <p>5 mark are the appendices to the Perry report.</p> <p>6 Oh, and the J&J bad acts boxes.</p> <p>7 And the books. I brought</p> <p>8 books. You didn't mark the books.</p> <p>9 MS. SAULINO: All right. With</p> <p>10 all of that said, I have no more</p> <p>11 questions today.</p> <p>12 MS. CONROY: We do --</p> <p>13 plaintiffs' counsel, we do not agree</p> <p>14 to keep this deposition open until</p> <p>15 there is a court order that there</p> <p>16 would be any additional time with</p> <p>17 Dr. Egilman.</p> <p>18 With respect to the boxes, that</p> <p>19 was my law firm that brought the</p> <p>20 copies of exhibits, and the documents</p> <p>21 to Dr. Egilman's report. And as far</p> <p>22 as I could tell, counsel here for the</p> <p>23 most part did not have copies of</p> <p>24 either the report or the exhibits that</p>

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<p>1 related to them. They're all here, 2 and they were available for both the 3 doctor and for counsel.</p> <p>4 MS. SAULINO: Okay. Just to 5 correct the record on that, we did 6 mark, actually, at the very beginning 7 of the first day, binders with all of 8 his opinions and the support that we 9 had been given, at least, but those 10 were a little unwieldy. You had your 11 staff back there, and so we took him 12 up on the offer to hand the exhibits 13 to him. But we did have them.</p> <p>14 THE WITNESS: Excuse me. Just 15 not to interrupt this, and I know I'm 16 enjoying it, but can we go off the 17 video record? I think I'm done. 18 Right?</p> <p>19 MS. CONROY: I'm just about 20 done.</p> <p>21 THE WITNESS: The time is up.</p> <p>22 MS. CONROY: It did not have 23 the full documents. It just had 24 the -- it did not have the full Bates</p>	<p>1 why I asked.</p> <p>2 THE VIDEOGRAPHER: That 3 concludes today's deposition. The 4 time is 5:56 p.m.</p> <p>5 (Proceedings recessed at 6 5:56 p.m.)</p> <p>7 --00o--</p>
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<p>1 documents printed in those notebooks.</p> <p>2 MS. SAULINO: And Dr. Egilman 3 did not provide any indication in his 4 report that those were -- those full 5 Bates documents that were simply cited 6 under the opinions were intended to be 7 considered a part of his report as he 8 defined for me later yesterday.</p> <p>9 MS. CONROY: I think it's quite 10 clear that that's not true.</p> <p>11 THE WITNESS: Okay. So I -- 12 we're done time-wise, right?</p> <p>13 MS. SAULINO: Do you have any 14 questions, Ms. Conroy?</p> <p>15 THE WITNESS: We're over 14 16 hours.</p> <p>17 MS. SAULINO: Ms. Conroy, do 18 you have any questions?</p> <p>19 MS. CONROY: I have no 20 questions.</p> <p>21 MS. SAULINO: If she has 22 questions, then she's allowed to use 23 more time.</p> <p>24 THE WITNESS: I know. That's</p>	<p>1 CERTIFICATE 2 I, DEBRA A. DIBBLE, Registered 3 Diplomate Reporter, Certified Realtime 4 Reporter, Certified Realtime Captioner, 5 Certified Court Reporter and Notary Public, 6 do hereby certify that prior to the 7 commencement of the examination, DAVID S. 8 EGILMAN, M.D., MPH was duly sworn by me to 9 testify to the truth, the whole truth and nothing but the truth.</p> <p>10 I DO FURTHER CERTIFY that the 11 foregoing is a verbatim transcript of the 12 testimony as taken stenographically by and 13 before me at the time, place and on the date 14 hereinbefore set forth, to the best of my 15 ability.</p> <p>16 I DO FURTHER CERTIFY that pursuant 17 to FRCP Rule 30, signature of the witness was 18 not requested by the witness or other party 19 before the conclusion of the deposition.</p> <p>20 I DO FURTHER CERTIFY that I am 21 neither a relative nor employee nor attorney 22 nor counsel of any of the parties to this 23 action, and that I am neither a relative nor 24 employee of such attorney or counsel, and that I am not financially interested in the action.</p> <p>DEBRA A. DIBBLE, RDR, CRR, CRC NCRA Registered Diplomate Reporter NCRA Certified Realtime Reporter Certified Court Reporter</p> <p>Dated: 1 May 2019</p>

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1 INSTRUCTIONS TO WITNESS	1 ACKNOWLEDGMENT OF DEPONENT
2	2
3 Please read your deposition over	3
4 carefully and make any necessary corrections.	4 I, DAVID S. EGILMAN, MD, MPH, do
5 You should state the reason in the	5 hereby certify that I have read the foregoing
6 appropriate space on the errata sheet for any	6 pages and that the same is a correct
7 corrections that are made.	7 transcription of the answers given by me to
8 After doing so, please sign the	8 the questions therein propounded, except for
9 errata sheet and date it.	9 the corrections or changes in form or
10 You are signing same subject to	10 substance, if any, noted in the attached
11 the changes you have noted on the errata	11 Errata Sheet.
12 sheet, which will be attached to your	12
13 deposition.	13
14 It is imperative that you return	14
15 the original errata sheet to the deposing	15 DAVID S. EGILMAN, M.D., MPH DATE
16 attorney within thirty (30) days of receipt	16 Subscribed and sworn to before me this
17 of the deposition transcript by you. If you	17 _____ day of _____, 20 _____. 18 fail to do so, the deposition transcript may
19 be deemed to be accurate and may be used in	19 My commission expires: _____
20 court.	20
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Page 832	Page 834
1 ERRATA	1 LAWYER'S NOTES
2 PAGE LINE CHANGE	2
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